PREFACE

Most of these essays were contributed as articles to the *New Review*. One of them, *'The Constitution-making Assembly'* appeared in the *Hindusthan Review*. To the Editors of these Journals I owe my thanks for allowing reproduction here—as also to the Director, [illegible], Trichinopoly, for the reappearance of *Professor the Constitution of India* which was delivered as a Talk. These papers are reprinted in the hope that they will be found useful in the great debate on the Constitution of India that is about to be inaugurated in the Constituent making Assembly and in the country.

M.

Annamalainagar,
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THE REVISION OF THE CONSTITUTION

From all accounts of the talk that is proceeding in India on the future constitution of the government of the country, one fact emerges—and that is that there is thorough, complete, and general discontent with the constitution as it is—as it was framed by the Government of India Act of 1935. This discontent does not play only about the details or devices of the constitution. The discontent attacks the very fundamental principles of the constitution. The Congress demands independence, the Muslim League denounces Federation and Democracy, the Hindu Mahasabha pins its faith on Majority rule. How far and deep the burrowing under the fundamental principles of which the constitutional system of government in India is built is proved by the utterances of Mr. Jinnah and others of minority communities. Take the latest of Mr. Jinnah's Speaking in March 1941 at a meeting of the Aligarh University Union—and you cannot get Mr. Jinnah to be more academic than under such auspices—he developed the thesis that Democracy is impossible in India 'as there is not a single homogeneous nation and a single cultural and socially organized society'. An electoral system framed according to the democratic idea would only result 'in permanent domination of a Hindu majority over a Muslim society in a minority, antagonistic to each other and different in everything that is essential to life'. There cannot be a more thorough-paced denial of the whole principle on which the present government of India is founded. This is not a new view nor a personal view of Mr. Jinnah. As long ago as 1937 at its Lucknow session, the Muslim League denounced Federation as it considered the scheme to be detrimental to the interests of the people of India generally and to those of Moslems in particular. It was in 1939 that the Working

Committee of the League for the first time adumbrated the new constitutional theory to which it is now wedded. In one of the Resolutions passed at this meeting it said:

"Muslim India occupies a special and peculiar position in the polity of India and for several decades it had hoped to occupy an honourable place in the national life, government, and administration of the country and worked for a free India with a free and independent Islam in which they could play an equal part with the major community with a complete sense of security for their religious, political, cultural, social, and economic rights and interests. But the developments that have taken place, especially since the inauguration of the provincial constitution based on the so-called democratic parliamentary system of government and the recent experiences of over two years, have established beyond any doubt that it has resulted wholly in a permanent communal majority and the domination by the Hindus over the Muslem minorities whose life and liberty, property and honour are in danger, and even their religious rights and culture are being assailed and annihilated every day under the Congress government in various provinces.

After this lengthy preamble the Committee resolved that:

"While Muslim India stands against the exploitation of the people of India and has repeatedly declared in favour of a free India, it is equally opposed to the domination by the Hindu majority over the Muslims and other minorities and the vassalization of Muslim India and is irrevocably opposed to any federal objective which must necessarily result in a majority community rule under the guise of democracy and a parliamentary system of government.

The further reason given for this decision is that 'such a constitution is totally unsuited to the genius of the people of the country which is composed of various nationalities and does not constitute a national State'.

This decision constituted such a radical change in the constitutional attitude of the Muslim League that the Indian Year Book chronicler characterized this attack on provincial autonomy and on majority rule as 'an altogether new line

struck for the first time by the Muslim League'. More was to follow in this line, for, at the Muslim League meeting of April 1940, was formulated the theory of the Two Nations. 'Such divergent nationalities as Hindus and Muslims', Mr. Jinnah said at that meeting, 'could not be trnasformed into one nation by the artificiality of British parliamentary statutes'. 'The two represented differences not merely of religion but of distinct social orders of peoples, who neither intermarried nor inter-dined, who differed in philosophy, culture and literature, whose inspiration was drawn from different sources of history, whose epics and heroes were different, and whose victories and defeats overlapped'.

And so the Muslim League called for a radical re-consideration of the constitution. In the correspondence between Mr. Jinnah and the Viceroy, published in February 1940, Mr. Jinnah had asked among other things that, so soon as circumstances may permit or immediately after the War, the entire problem of India's future constitution apart from the Government of India Act of 1935 shall be re-examined and reconstituted *de novo*. To this demand of Mr. Jinnah, the Viceroy replied that 'the declaration made with the approval if His Majesty's Government on October 18, 1939, does not exclude examination of any part either of the Act of 1935 or of the policy and plans on which it is based'. As the Viceroy also informed Mr. Jinnah that 'His Majesty's Government are not under any misapprehension as to the importance of the contentment of the Muslim community to the stability and success of any constitutional developments in India'. we may take it for granted that no constitution which does not satisfy the Muslim community will have any chance of being passed or put into effect under the aegis of those that can put constitutions into effect in India at present.

So it is that the whole constitution of India is to be thrown into the melting pot. None of the principles or institutions of the Government of India Act of 1935 is to be considered sacred. None of them is unalterable. Every-one of them is open to question. None of them is to be

taken for granted. Not one of them is to be considered fundamental. Neither Federation, nor provincial self-government, nor responsible government, nor Dyarchy at the Centre, nor the Franchise—not even Separate Electorates are to be assumed, as a matter of course, to continue to be part of the framework of government. Some may be retained, all of them may be thrown overboard. But everyone of them is open to discussion and criticism and must justify its claim to continue being embodied in the constitution. In other words, we are called upon to re-think the whole system of the government of India—the principles on which it should be provided, and the institutions in which those principles should be incorporated. We are called on to probe into the value and utility of such constitutional ideas as Democracy and Rule by Majority, the Right to Vote, Federation and such institutions as Responsible Government, Communal Electorates, Dyarchy.

We cannot stop at that. If the whole constitution of the government of India is to be reformed, we must go beyond the four walls of the Givernment of India Act of 1935. One of the chief defects of that constitutional law is that it had no provisions for changes in the system of local administration in keeping with the new ideas it introduced into the system of India's government. Now when the very system of government is called into question, we must take into consideration every part of government—the lowest as well as the highest—the foundations as well as the structure. As Burke said: 'To enable us to correct the constitution, the whole constitution must be viewed together and it must be compared with the actual state of the people and the circumstances of the time'. The constitutional debate that would thus be released in India will remind students of history of the constitutional debates that took place at the turning points of history—of the Conciliar Movement in Catholic Europe, of the Philadelphia Convention when Federation for the U. S. A. was devised, of the National Assembly of Revolutionary France where the whole system of the government of France was considered and framed. That

the Indian Constitutional Debate may be as thorough and as decisive as these must be the hope of everyone that believes in discussion as a method of civilized and free government.

Two metaphors are commonly used in debates on Indian Constitutional Reform. These are the'Melting Pot' and the 'Clean Slate'. The present constitution, we are adjured, must be thrown into the melting pot. All the institutions and devices created or kept in being by the Government of India Act of 1935—the Assemblies, Provincial and Central, the Executive, Provincial Autonomy, Federation, the I. C. S., the Communal Award, Separate Electorates, Dyarchy, all must be thrown into this capacious pot and the whole heated up to melting point,—evidently all these ingredients are considered to be metallic—and the result awaited. The eventual cooling down of this molten stuff will give us the constitution India needs. We are to imitate Medea who by getting Pelias cut to pieces and boiling them hoped to restore him to youth and vigour. The other metaphor takes us from the iron foundry to the school-room. We are to adopt the devastating methods of the teacher who, with one sweep of the duster on his pupil's slate rubs off whole sums or dictated matter, and asks him to begin all over again. We are to wipe off with one fell swoop all the complicated figures and hieroglyphs and abracadabra of the Government of India Act and other Acts providing for the government of India and after the dust of this process has died down, we are to write what we will upon the more or less clean slate. The clean slate is a more thorough-going metaphor than the melting pot—for in the melting pot something will be left of the old. But those that resort to the clean slate can write what they please upon it and the new matter may have no relation whatever to the old.

Is either of the processes suggested by these metaphors useful in the framing of the Indian Constitution—or for that matter of any constitution? If we throw all the institutions and practices and principles of the government of India into a common pot and subject it to some mental

process corresponding to melting—and wait, how can we expect a better constitution than he present one? Even if we do some stirring, it will be chance that will determine the result. A change there may be—but we cannot be sure it will be a change for the better. We may, for instance, have other relations between the Executive and the Legislature, between the Centre and the Provinces. But they may not be better than the present—they may be worse. Communal electorates may have disappeared without any substitute for defence of minorities being put in their place and the franchise may be extended to the propertyless. Federation may have melted into thin air. The Indian States may have absorbed large portions of the provinces of British India. Dyarchy might have extended from the centre back to the provinces, and Paramountcy from the Indian States to the British Indian provinces. The result of the melting may be passing strange. It may give us a constitution—new, no doubt, but fearsome and dangerous. Apart from the fact that Reason and Choice would have played little part in this kind of constitution-making, one cannot expect a good combination from bad ingredients and there is no knowing what good ingredients may disappear. And the result may be only an inchoate mass.

Still less helpful is the clean slate process. No old constitution can be swept off so completely. Even constitutions brought into being by revolutions have not been able to dispense with some fundamental institutions of their predecessors. The American Declaration of Independence did not do away with the Common Law of England which still continues to be the foundation of the law administered in American Law Courts. De Tocqueville has taught us to believe that the centralization of the *Ancien Regime* continues to be the chief administrative feature of the government of France made by the Liberty, Equality, and Fraternity of the French Revolution. The Weimar Constitution had to reckon with the Prussianized bureaucracy and Army. The Bolshevik Revolution has given a further

lease of life to the despotism of the Tsars. The constitution of Japan had to defer to the divinity of the Emperor, the influence of the Elder Statesmen, and the power of the Army and the Navy. And here in India can anyone doubt that the parliamentary process has had to be consonant with Hindu Dharma, especially Caste, Muslim poverty, the influence of the I. C. S., the Land Revenue systems and the Village Economy of India. No, the clean slate will never do in constitution-making.

If we must resort to metaphors as guides to constitution-making, the testimony of statesmen is that architecture is more helpful. Burke speaking of reform in France advised the reformers to make the reparation as nearly as possible in the style of the building'. The art of building a new society according to Saint-Simon is given only to those men that find a connecting bond between the Past and the Future, who reconcile hopes and memories and satisfy the needs of all. In the art of State-building as in that of house building, one has to lay the foundations first, and raise the superstructure with due consideration to the foundations. But even here the analogy must not be pressed too close. You may alter the foundations of a house. But you cannot alter the foundations of a State. Its geography, its climate, its international position, the history of the people, its religion, its social organization, its character—these are the foundations on which the constitution of a State is raised. And these cannot be changed—the first four, not at all; the last three with great difficulty and only after a long-drawn secular process. Constitution makers must base reforms on the facts of the life of the people.

We must do this in India. The new constitution must be built on the facts of Indian geography, history, and life. This is not superfluous or unnecessary advice. Not all constitutional proposals made for India have followed this wise course—completely and fearlessly. Even the Montagu-Chelmsford Report, the Simon Commission Report, the Joint-Committee Report are not realistic and scientific enough.

They take some of the facts of Indian life into consideration —but not all. They refer to the religious differences, the unequal development of the people, the illiteracy of the masses,the social strata, the predominance of agriculture. But that all the important, facts have not been taken into consideration is proved by the omission of any reference to the important part played by the Family and the Village in the social life of India. The Lothian Franchise Committee and the Delimitation Committee refer to them—only to dismiss them as unworthy of any scheme of electoral reform.

The constitution makers of the future at the least should be more deferential to facts. They would then be spared the mistakes and disillusionment of their predecessors. These introduced the beginnings of political democracy among a people which was ages behind the social conditions of democracy. They introduced majority rule among a people which had not attained national unity, neglectful of the fact that majority rule can flourish to the ends of liberty only among a united people. They extended the franchise among classes of the people, not because these were politically competent but because they wanted a certain percentage of the population to be admitted to the vote in order to make responsible government plausible. They allowed 'linguistic' autonomous provinces that cannot subsist without financial subsidies from outside. They would have been saved these false steps, which have landed India in the present constitutional *impasse* if they had been a little more respectful of conditions and circumstances.

Not that facts and circumstances should determine constitutional progress. Ideas and principles have their part to play in constitutional reform. With Burke we do not put abstract ideas wholly out of any question, because as he pointed out under that name we should dismiss principles, and 'without the guide and light of sound, well-understood principles, all reasoning in politics as in everything else would be only a confused jumble of particular facts and details'.

India by right of her civilization and culture is entitled to free government. Her people are advanced enough to have a right to representative government. But this free and popular governmert must be fashioned in accordance with the life or the people. 'Who are you', exclaimed Burke in his speech on Conciliation with America 'that you should fret and rage and bite the chains of Nature?' To the statesman as to the scientist is addressed the maxim:

To the solid ground
Of Nature, trusts the mind which builds for aye.

——:o:——

THE FOUNDATIONS OF NATIONAL SELF-GOVERNMENT

It is curious that in almost every scheme of constitutional reform in India little or no attention is paid to the foundations of sound and substantial self-government, i.e., local self-government. Neither the Government of India Act of 1919 nor the Government of India Act of 1935 has any section or sections reshaping the form of the government of local bodies in accordance with and in the direction of the progressively popular system of provincial or central government embodied in these Acts. It has been left to provincial legislatures to make the systems of local government more and more democratic. Thus there has been no uniformity in speed or achievement in the progress of local self-government. Whereas, one should have thought, there being a uniform system of provincial government, some attempt at uniformity would have been pressed in regard to the form and purpose of these institutions of local government. In fact as the foundations of popular government have to be broad based if the superstructure is to last and be useful—this one principle of making the institutions of local government much more democratic than the institutions of provincial government should have been the principle informing all legislation in regard to local self-government everywhere. As a matter of fact there have been different rates of progress and different levels of progress have been attained. In some provinces municipal councils and district boards have been thoroughly democratised with all its members elected, with elected Presidents and with large powers and jurisdiction, others have some official or nominated elements and are restricted in power and jurisdiction. But now that India is on the eve of attaining to full national self-government, and the provinces have everywhere been granted, and some of them have enjoyed without a break for nearly 10 years, a large measure of autonomy and popular government, it is necessary that the foundations of self-government be every-

where strengthened and broad-based to the same extent so that the superstructure of provincial and national self-government may stand full-square to all the winds that are bound to blow upon it. The particular forms in which this complete self-government should be embodied will depend on the traditions, customs, social and economic life of the locality, the cultural advancement of the people. But about the general purpose and characteristics there should be uniformity.

To start from the very foundations of political life, the first unit of the State, the first stage in the life of the State, the Village must receive the first and foremost attention of those charged with the duty of remaking the constitution of India. And it must be an agreeable duty. For the village is the oldest institution of self-government in India. It is there that 90% of the population live. It is round the village that the main river of India's social and economic life flows. It is in the villages that the people who produce the food of India live. It is from there that even now a large part of the industrial labour in the great cities of India is recruited. It is the villages that support the life of India. The best training in self-government that most of the people of India can obtain is in the villages. And here it may be as thorough and complete as it can be. For here the people would be competent to manage their affairs. Village affairs are things they can understand. They know the village with an immediate and direct knowledge. Its needs, its demands, its grievances, they know without anybody having to tell them from outside. And being peasants and heads of families they have enough experience in the management of affairs to manage the affairs of the village. Here the people could be entrusted with the most direct participation in the business of government. If direct democracy is possible anywhere at all in the modern State it is in the village. The following reforms are suggested with a view to making village self-government as complete as it can be.

1. The Family and the Household should be recognised as the political unit in the governmental structure of the village. The family is the historic elementary first social unit of the village as of the State. It is natural and wise to recognise it as a political unit. It is only the individualism imported by the British that could stand in the way of such a recognition. If India is to build her polity on Indian foundations, the first step necessary is to recognize the family or the household as a unit.

The franchise, the right of electing members to the governing body of the village, bearing the historic name of Panchayat should be given to every head of family. Incidentally such a right and its exercise will preserve the social prestige of the head of the family and will help to stop the dry rot in individual and social discipline that has started in Indian society.

2. The Parliament of the Village should be the Annual General Meeting of the Village. It should consist of all the heads of families or households. This annual meeting of the village should have the right of

i. electing the members of the Panchayat
ii. general discussion of the affairs of the village
iii. discussion of the management of the affairs of the village by the Panchayat during the past year
iv. voting on the income (taxes and rates) to be collected and the expenditure of the year
v. directing the Panchayat in regard to the work of the coming year, the needs to be met, the grievances to be remedied.

THE PANCHAYAT:—This is the governing body of the village. It should consist of the historic 5 from villages with a population of less than 500 (there are nearly 500,000 of them) and a larger number in proportion for those with 500 and above (nearly 200,000). It should be a wholly elected body, elected every year at the open annual meeting of the village. If there are *Cheries* of the depressed classes attached to a village these should have the right of electing one representative to the Panchayat on the same lines as the village

itself. It should be charged with the duty of administering all the local affairs of the village. The judicial functions now performed by the Panchayat will continue. The combination of the executive and judicial functions in the same body will not be disastrous in a small community. On the other hand it would be an advantage as it would give the Panchayat in its judicial capacity a knowledge and prestige which as members of the Panchayat they would command.

4. The subjects for administration by the Village and its Panchayat:—

i. Peace and order of the village—This should be mainly the charge of the village and its Panchyat who should have their own police servants. The centralized police of the British system has not given the village the protection or the training in organizing its own security that it needs. While the provincial police should still have the duty of protecting attacks against the security of the village from outside, the maintenance of pecae and order within the village should be the main concern of the village. Also the civil and criminal jurisdiction of the Panchayat (which is now restricted to the limit of petty cases and the disposal of suits in which no valuable right in property, i.e., worth more than Rs. 50 or, with the written consent of the parties, Rs. 200 is at stake) should be greatly extended. For villages with a population of more than 500, the civil jurisdiction ought to be extended to cases amounting to Rs. 100 and to criminal cases short of murder and dacoity and arson in which the panchayatdars or a deputation of them should be associated with the trying magistrate or Sessions Judge as assessors. For if anyone could be expected to know anything worth knowing about the happenings in a village it is the panchayatdars. . . .

ii. Roads in the village and to and from the village.
iii. Sanitation, Health, Village housing and planning.
iv. Water-supply, wells.
v. Education, care of the poor.
vi. Development of agriculture and village industry.

5. Financial Administration:—This is the crux of village self-government. If village self-government has been anaemic and stunted it is because the financial resources of the village government have been scanty. If village self-government is to become red-blooded and vigorous, the financial resources of the village government must be larger and more reliable than they are now. These should consist of

i. the rates and cases levied now

ii. the latter must be supplemented by financial aid from the provincial government. Such State aid is available even now. In the shape of education grant for the maintenance of the primary school in villages, most provincial governments in India contribute from 30 per cent to 60 per cent of the expenditure on primary schools (the bulk of which are village schools). They also make smaller grants for roads and water-supply. But these grants are not enough. There is one source of provincial revenue which may be tapped for this purpose.

A common cry of the villagers is that the whole of the land revenue paid by them and collected by their Headman is taken away by the provincial government. They say they do not see any of it coming to the village in the shape of services or benefits. This complaint is not wholly justified for the villages benefit from the roads, the wells, the local hospitals or dispensaries, the schools built out of the funds granted by the provincial treasury—not to speak of the general peace and order organized and secured by the provincial government. But these benefits are so general and so diffused that a village cannot say to itself "Here is so much collected from my people coming back to me and to their benefit". To meet this complaint and the consequent discontent and, what is more important, to the present point, I would suggest that a certain percentage say one-third or

one-fourth—not more than half—of the revenue collected from the village be left with the Panchayat to fructify in the pockets of the Panchayat. Conditions to ensure that this amount is properly spent on the needs of the village should be attached to this grant, e.g., that the contribution from the land revenue would be continued after the first year only if the rest of the expenditure of the Panchayat has been met from the local rates and cesses collected as well as the usual conditions of Inspection and Audit. Nor need the provincial government be afraid that a large proportion of its income would be thus depleted. Everywhere, land revenue has become a progressively diminishing source of provincial revenue. Other revenues like Excise, Sales-Tax, Contributions from Income-tax are increasing sources of revenue dependant as they are on the growing commercial prosperity of the country. But the great advantage of this substantial contribution from the land revenue to the finances of the village is that it would make the self-government of the village a beneficent reality and lead to the contentment of the villagers as they would be given the happy sight of some part of their money coming back to them and being used for their benefit.

Nor is this a revolutionary or extraordinary suggestion. It has been tried elsewhere. In the Anglo-Egyptian Sudan, we are told in a recent survey "that the rural areas do not, like the townships, draw their revenue from local rates, but retain a portion of the taxes collected on behalf of the Central Government, these taxes being assessed on crops and animals and varying in form with local conditions".

6. An official Adviser of the Panchayat:—To give the members of the Panchayat and the villagers in annual meetings assembled information and advice on matters that come before them they should have at their elbow an Adviser appointed by the provincial government. His function would be generally advisory and informative. Even in advanced countries the help of such an adviser is not repudiated. The Clerk of the Justices of Peace and the Clerk of Council in Municipalities and County Councils in

England are of great help to their local authorities. Although this official adviser will not preside at any meeting of the Panchayat or of the Village—the president will be the Headman of the village—his presence will have a salutary effect in the direction of peace and order at these meetings. For these and other reasons an officer of the Land Revenue Department, e.g.—the Revenue Inspector as being most conversant with the life of the village would be the most appropriate for this appointment.

Going a step higher in the structure of the State we come to the District Boards and Municipalities. The principle of democracy should be applied at this higher stage with a little more qualification than in the village. On account of the larger area, the greater complexity of life, the gap between the needs of these units and the limited experience of large sections of the people in these areas, democracy cannot be direct. It has to be representative. The people cannot manage their affairs or even discuss and decide on them in annual meeting assembled. Therefore not only their executive but their legislature must be representative. These must be filled by election.

The suffrage cannot be universal as in the village. Men of competence and responsibility should be entrusted with the duty of choosing their representatives on these higher institutions of local government. Literacy (say of the level of the VIII standard) and property or payment of taxes or rates of the annual value of Rs. 25 may be the electoral qualification. The electoral constituencies for election to District Boards should be the firkas and the villages included in them.

In addition to members elected according to the present system other members may be elected by the Boards or Municipalities from the general public outside, like Aldermen in England. The election of members from outside gives opportunities of service to those 'good men and true' that may not like to stand the racket of popular elections. In English counties and boroughs such members form one-third

of the number of councillors. District Boards and Municipalities may also be allowed as in England to elect their Presidents from outside their body provided the person so elected has all the qualifications required of a cndidate for election to the body.

The functions of District Boards and Municipalities should be expanded so as to give them the power to provide for

i. Schools for their areas including technical schools.
ii. Roads—other than trunk roads, building and maintenance of travellers' bungalows.
iii. Town or District planning.
iv. Health and Sanitation including water-supply.
v. Duties imposed by the provincial government in regard to licensing of cinemas, liquor houses, etc.

The finances of District Boards and Municipalities must be sufficient. To perform these social services, District Boards and Municipalities should be allowed to raise their revenues from house taxes, taxes on professions, license fees for the erection and use of markets, fairs, tea-houses, liquor houses, cart stands, fees on the possession and use of vehicular traffic, cesses on land revenue.

The appointment of permanent Executive Officers has been called for by experience. All district boards and municipalities should have Executive Officers selected by a Local Services Commission, appointed by the provincial government for a term of 5 years to a local board or municipality and irremovable by the board or municipality during that period and transferable to other local boards or municipalities after that period. Every provincial or all-India Committee or Commission that has reported on the subject has recommended the separation of the Executive from the deliberative body in local government. The President, the head of the executive would be elected by the District Board or Municipality.

All these reforms are suggested with a view to the making of local self-government strong and sturdy. For such local self-government is necessary to free government.

It was the healthy and vigorous growth of municipal liberties that according to Aeton "made Belgium of the countries on the Continent from immemorial ages the most stubborn in its fidelity to the prineiple of self-government". It was because "the English gentry maintained the means of local self-government such as no other country possessed", that liberty has had such a securc and continuous carcer in England. This English praetiee of self-government required that every institution of local sclf-government should have the right to pass sueh bye-laws as it finds necessary for its own government without obtaining the consent of any superior power even that of the Crown or Parliament and that such byc-laws should stand good in the courts of law, provided they are *intra vires* of the authorities concerned and should be as binding on everyone concerned as any statute or law. Bye-law must not be interpreted to mean any kind of subordinate or inferior law—bye-law means law of the place. Its character is thus described by Coke, "The inhabitants of a town, without any custom, may make ordinances or byc-laws for any such thing which is for the general good of the public unless indeed it be pretended by any such bye-law to abridge the general liberty of the people, their inherent birthright, assured to all by the common law of the whole land, and which that common law, in its jealous regard for liberty, does not allow to be abrogated or lessened even by their own consent—mueh less, therefore, by the consent of their delegates in parliament". From this eenturies old practice of English loeal self-government is derived, the principle regulating all healthy and vigorous loeal government that, as laid down by Lieber an old American teacher of political science, "self-government to be of a penetrative character, requires the institutional self-governmcnt of the country or district; it requires that everything which, without general inconvenience, ean be left to the circle to which it belongs, be thus left to its own management". The merits of local self-government are proved also by pictures of contrast. How insecure political

liberty is in countries where a sound system of local self-government does not prevail is proved by the experience of France. M. de V'illele, speaking in the Chamber of Representatives in 1815 of the laws, which since the French Revolution had successively deprived the *departments* and the communes of all capacity for activity, said that thus "thcy had destroyed public spirit, succeeded in dividing and demoralizing thc nation, scparated Frenchmen one from thc other, brokcn the bonds bctween citizcns and governments and performcd the inevitable return of anarchy if the govcrnment were fceblc and of despotism if it were strong".

It is necessary to insist on thc valuc of local self-government and of the danger of denying it, as of late there has been growing a prejudicc against it. The fashionable economic argument is trotted out to belittle the utility of this factor of political liberty. Local self-government is so inefficient, it stands in the way of progress, the State would realize its ends much quicker without it. This economic argument was recently put by George Bernard Shaw in a conversation with Arnold Lunn "When I was a boy" he said "the parish councils and the town councils were run by half a dozen Protestant gentlemen who ran them very efficiently. Thc taxes wcrc collected and the roads were kcpt in order. Thcn came the Liberal Government with fine ideas of dcmocracy and changed all that and thc Councils wcrc elected by the pcoplc. Bcfore long thcy becamc a hot bed of bribery and corruption. Now that thc Frec State is in the saddle, thcy do not have any more of that kind of nonsense. They have appointed government officials all over the place and havc returncd to the fine old autocratic systcm". And one of the first things that Hitler did as soon as hc camc to power was to destroy the autonomy of the States of the German Reich and reducc them to the status of mcrc provinces. This prcjudicc against local self-govcrnment is rearing its head nearcr home. Following the bad examplc of the I.C.S. who used to ridicule it as "local sluff" the new popular governments in the provinces are speaking of the cconomic uselessness of local boards and

municipalities. It is significant that the new governments speak of local administration rather than of local self-government. The Minister for local self-government has become the Minister for local administration. No doubt local boards and municipalities have justified this change of attitude by their inefficiency, their corruption and their factiousness. But the remedy for these evils has to be found and should not be beyond the resources of statesmanship. Throwing the baby out with the bath water is one way of solving the problem of the baby—but not if the baby is to be kept. And the baby of local self-government has a right to be kept and fed so that it may grow to lusty manhood. For its growth to sturdy growth is necessary for the development of the political manhood of the country.

It is on the strength and energy of the institutions of local self-government that the strength and energy of the popular government of a large State depends. The more centralization there is in a State, the less wide could popular government be spread. For popular government when centralized allows only a small proportion of the people to exercise themselves in self-government. Self-government has to be spread wide and even all over a large State if the people at large are to find their feet and walk in the ways of self-government Democracy has to be decentralized if democracy is to be real. A centralized democracy is a dying democracy. It will die of apoplexy.

THE FUTURE OF FRANCHISE IN INDIA

In regard to Franchise, as in regard to other parts of the future constitution of India we must get down to some fundamental thinking. And that thinking must fasten itself on the facts of the experience of the franchise in India during the 20 years or thereabouts that have passed since the right to elect representatives to legislative councils and assemblies has been exercised on a large scale in India.

The principle of the first wide extension of the franchise was laid down by the Montagu-Chelmsford Report on Constitutional Reforms in India which directed that 'the limitations of the franchise which it is obviously desirable to make as broad as possible should be determined rather with reference to practical difficulties than to any *a priori* consideration as to the degree of education or amount of income which may be held to constitute a qualification'. Accordingly the Franchise Committee which was appointed in 1919 to consider the question of franchise made proposals which gave the vote to about one-tenth of the adult male population, for that was as much as the administrative machinery that would have to arrange the elections could cope with. Similarly when the next revision of the Constitution was contemplated in 1930 the Simon Commission recommended that the Franchise Committee which it proposed for drawing up the new franchise scheme should set about the constitution of 'an electorate of about 20 per cent of the adult population'—for at least that was necessary to justify any extension of popular government. Thus, not competence to exercise the vote, not even demand from those that wanted the right to be granted to them was to determine the extension of government.

The Simon Commission in their report recognized that many of the voters of that time very imperfectly understood, if they understood at all the full implications of enfranchisement or the constitutional functions of their representatives.

But the system of popular government that they envisaged required much larger legislatures than existed before and therefore a much larger number of people must be given the right to vote. And so the Franchise Committee which was to make proposals to be embodied in the present constitution was to examine the whole subject with a view to an increase of the electorate to a figure not less than 20 per cent of the population suggested by the Statutory Commission nor more than the 25 per cent suggested at the first session of the Round Table Conference. In accordance with these principles the Government of India Act of 1935 conferred the right to vote, broadly speaking, on anyone who paid any provincial tax or local rate, or was an agricultural property-holder, or paid land revenue, or was an agricultural tenant of various kinds, or an assessee of income-tax. Literate persons, satisfying an elementary test, like the signing of one's name in one's mother-tongue, also were given the franchise. Franchise was also granted to women who are the wives or widows of men with property qualifications or who possess a property qualification in their own right or an educational qualification. All these voters were to be gathered into manageable territorial constituencies, due regard being paid to the principle of communal electorates granted to Muslims, Indian Christians, Anglo-Indians, Europeans, Sikhs and others. In addition, provision was made for the representation of special interests like Labour, Commerce, Industry. A system of double election was given to the 'depressed' classes whereby a panel of candidates for election in territorial constituencies of all Hindus (depressed classes included) was elected by qualified depressed class voters. This is, in general terms, the system of franchise provided for provincial governments by the Constitution which is about to be amended. The franchise for the Central Legislatures is more restricted and requires no elucidation for the present purpose—which is to judge the franchise system at its widest.

To see how the latest franchise system may be amended, we must find how it has worked so far. Recorded evidence

is not forthcoming as to how it has worked in the two years of its operation. But we may judge of the wider system from the results of the narrower system of the earlier constitutional period of 1919-1935. During this period 5 provincial elections took place. Though the popularity of these elections has been steadily increasing it cannot be said that it shows the franchise to be a right welcomed and voluntarily used by the people to whom it has been extended. The year 1920, the first year of the operation of the Montagu-Chelmsford Refroms, was an exceptional year on account of the widespread boycott of the elections under the influence of the Congress party. Only about 25 per cent of the registered voters went to the polls in that year. In 1923 there was an improvement—the percentage of registered voters that went to the polls varying from 34 in Bengal to 36 in Madras—Bombay alone going as far up as 69 per cent of the votes as distinguished from voters. In 1926, the improvement was a little greater, the percentage ranging about 48-49 only, Bengal remaining stationary at 33 per cent. In 1937 the first elections under the Government of Indi Ac of 1935, the percentage of voting was higher than ever before, in some places reaching 75 per cent, as the Congress with its thorough organization, its powerful propaganda, its mass-suggestion had decided to contest the elections with a view to assuming ministerial office. But left to themselves when they are not dragooned and carried to the polling booths, they do not take kindly to voting, as is proved by their behaviour at ordinary elections, provincial and local board and municipal, where 50 per cent is the average percentage of voters that vote.

Apart from the reluctance to use the vote, there are other accompaniments of Indian elections to discourage and warn the political reformer. Large numbers of those enrolled as voters under the present franchise system are illiterate. And for those that are literate, the standard of education is very low. That is why such devices as coloured voting boxes, pictorial voting papers, and the polling officer being allowed to mark for the voter have had to be provided for.

Of course, literacy and a high standard of education are not absolutely necessary for the exercise of wisdom and judgment in the use of the vote. Such judgment, as may be acquired from the management of affairs private or public open to a property-holder, may be enough for decisions on public matters within his own immediate notice or range. But surely for decisions on questions of provincial or national policy—like those connected with education, or industrial development, or defence, a broader outlook and study than that presented by village affairs would be required. Under the present franchise system an illiterate ryot owning an acre of agricultural land would have the vote and he would be called upon to choose his representative for the provincial legislative assembly. Is it any wonder that votes are bought and sold? Although we cannot accept Mr. Justice Rossignol's views on other matters before the Joint Committee of Parliament in 1933, his evidence on this matter can be corroborated by the experience of others who have stood as candidates for elections in India, like the present writer who has gone through one municipal election and two legislative council elections. All that the critics of this evidence can say is that these things have happened or are happening elsewhere—and it is no bar to an extension of popular government. The extension of popular government is not in question, but the building of popular government on these rotten foundations. Is it not possible to have representative or even responsible government on the basis of a smaller but strong and competent electorate? But of that later.

It is not only the corruption by way of money gifts or promises of administrative favours to individual voters that has been made possible by this wide extension of the franchise. Corruption by way of appeals to passions like hatred of the present system of rule—the Indian villager like the Irishman has always been 'agin' Government,—to the possibility of a new heaven on earth in which there would be no taxes to pay, to the prejudice of Brahminphobia, to the mystical name of Mahatma Gandhi, has spread rampant

during recent elections in India. 'Vote for Mahatma Gandhi' proved a good election cry to the party that made use of it. But it was hardly a political argument—it was just the kind of appeal which would go home to a people that worshipped asceticism and renunciation, and that had not received political instruction that would have helped them to take a rational view of rival policies and parties.

It is not that the poor Indian voter is a particularly corruptible or gullible citizen. It is simply because he has not realized the value and use of a vote. He had not asked for it—it was given to him at somebody else's request. He has not learnt that by means of it he can improve his lot. The little use he had made of it in district board or municipal elections had not brought him much relief. Voting for and electing people to public offices has not been in the tradition of his country's history. There have been popular *Sabhas* and *Samitis* no doubt, but the members of these assemblies were not elected by vote. 'Elders' and *Grihastas*, Heads of Households, were members of these assemblies. Not Election but Recognition was the ancient and traditional Indian method of constituting popular political assemblies. Facts like good birth, age, public service put certain men forward in village life or at the capital and they were recognized as representatives and leaders of the people.

Election by vote being a strange thing to him and as he does not see the value of it, it is no wonder that he puts it to the use that he does put it to—when he does bother about using it at all. He sees that other people want it very badly from him—and he gives it—for a price. Or if they will not pay for it, pressure of his religious or economic superiors like his Mirasidar or lawyer, or appeals to his loyalty to Dharma, or a free ride—sometimes ten miles away to the polling booth—and a good meal at the other end, or the influence of mass-suggestion provided by processions, *bhajanas*, mass-gatherings make him vote as other people please.

It may be that in the result the right set of people are put in power—to the greater well-being of the country. But

the elector is not doing it of his own free will and out of his own knowledge. It is not popular government—unless mechanical processes mechanically gone through are enough to constitute popular government. It may be also that after four or five elections, voters would find out things for themselves by trial and error, or because their literary and political education has increased, and they can be trusted to make a conscious and wise use of the vote. But the point of the present argument is that the bulk of the voters at present enfranchised are not competent to make a political use of the vote.

The political backwardness of the voter is not the only charge against the present franchise system. It is based on ideas and practices utterly foreign to the social and political traditions of the people of India. It is based on sheer and stark Individualism. It is the political theory upon which English social and political life has been based for a century or so, and which Englishmen in authority know and by which they fashion their ideas of reform for India. Again and again when appeals were made to Franchise Committees or Constitutional Reform Committees or Commissions to frame electoral systems on the still living family and village life of the people—they have been brushed aside by the English members of these bodies—the Indian members being faithful Liberals, following in the English wake—as impossible in the present circumstances.

To Household Suffrage proposed to the latest Franchise Committee the objection was taken, that a system which allowed one vote to each household would bring on to the electoral rolls more than 50,000,000 voters—the great majority of whom would be men—and so become unmanageable, that women would be almost entirely disfranchised, that the household is not used as a unit for revenue purpsoes, that many troublesome disputes would arise as to the unit which should be recognized as the household and the individual who should be recognized as its head, and that if the determination of these disputes were left to the ordinary village staff it would lead to corrupt

practices, and then there were the fluctuating, unstable habits of the people in jungle tracts. To these arguments the answer is that no one has asked for universal household franchise, but that the grant of this franchise should be governed by property and educational tests, that women's interests could be represented by the franchise being granted to women's associations as in the case of Labour, Industry and Commerce, that if the household is not used for revenue purposes so much the worse for revenue administration and Individualism need not be allowed to disintegrate the Family still further, that the disputes that might arise around the organization and use of this franchise will not be above the capacity of district officials and that no one in his political senses would think of enfranchising the children of the jungle. The Franchise Committee persisted in their objection—although it recognized that the system would distribute voting power fairly among the different classes of the people. Now that the whole constitution is to be revised, this question of basing the future franchise system of India on the Family ought to receive better consideration than it has in the past.

The Family is still a living group among all the communities of India. Whether the family is single or joint, divided or undivided, among Hindus as among Muslims, the head of the family, man or woman has experience of affairs, a sense of responsibility, a stake in things, and provided he has the necessary education, would make a political use of the vote. He would make use of the vote as a member of a living social unit, alive to social needs and attentive of social interests and not as an atomized individual unrelated to others, a stone among a heap of stones. It is because he is taken in the mass that he is at the disposal of party bosses and aspirants to dictatorship. The masses have been found to be played on easier than a pipe'—just because they have been herded in collections of individuals into casual *ad hoc* electoral constituencies.

The remedy is to make our electoral constituencies out of living organic bodies corporate whose members have lived and worked and talked over public affairs with each other

Let the family be made the electoral unit for provincial elections and the head of the family be given the vote. As the possession of a certain amount of property is a guarantee of independence and of knowledge, the family may possess property in various degrees of ownership. The minimum might be placed somewhere about 5 acres in respect of good fertile land and 10 acres in respect of dry, less profitable land. And, as the dispersal of these acres in more than one locality, under the practice of subdivision of holdings, is uneconomic and unpolitical, this landed property should form one compact, undivided plot. In urban constituencies an income of Rs. 50 a month might give the householder the vote. Actual residence in the constituency for elector as well as representative is essential. Absentee electors and carpet-bag candidates lower the quality of representation. As a higher standard of independence and knowledge ought to be required of a representative, candidates for election must possess—say an income of Rs. 2,000 a year.

In elections to the Federal Legislative Assembly, the Village, through the Village *Panchayat* ought to be given the vote, electing as many members as there are districts in the province. To the Village as an electoral unit the Indian Franchise Committee of 1932 objected: (1) that villages in modern India have in the vast majority of cases no self-governing institutions of their own; (2) that there are very few panchayats, only 11,770 out of a total 458,000 villages; (3) that it is the general testimony of officials and others in close touch with villages that the effect of making the village itself an electoral unit would be to intensify caste factions and local feuds and to create not harmony but discord.

The answer to these objections is not far to seek. If panchayats are not to be found everywhere, they must be created where they do not exist. One would have thought that would be the policy of any Government bent on infusing life and self-government into our villages. And where they do not exist, the village people could meet at a public meeting and vote, or vote in secret at the polling booth

which would be found in every village. The very village life would give them the common organic life that is necessary to make elections real. And as for factions and discords, are they so rare under the present individualistic system that we must not think of abandoning it? The remedy for factions is to be found in the promotion of social unity, public spirit, and tolerance—and not by breaking up the community life of villages through the electoral devices of Individualism.

And now we have to deal with the *vexata quaestio* of Communal Electorates. The position taken here is midway between extremes. We do not think that Communal Electorates are the *coup de grace* of Indian national unity. For if there were complete national unity, there would be no demand for communal electorates. There are other obstacles to national unity like Caste, religious intolerance, Communal laws like Hindu Law and Muslim Law. And these show no signs of dwindling in strength. As long as these remain, it is no use blaming communal electorates for their disservice to unity. They are an expression, a sympton of the incomplete unification of the country. And we do not effect a lasting cure of a disease by just attending to the symptom without attacking the cause. Nor can communal electorates be looked upon as the best and as permanent. They are a second best, as most arrangements in politics. They are a *pis aller*—a preventive of worse to come, like communal domination, communal riots at election time, the driving to despair of minorities.

The attitude of statemanship to communal electorates is to try to discover devices to minimize the evils of the system, put a term to it to national purposes. Let common electorates be the rule—in fact the proposal to use the village as the electoral unit just because it is a living organism will not allow the use of communal electorates as a parallel method of election—and let communal electorates be used as complementary and supplementary, means of filling representative assemblies. That is, the Muslims and other minorities would vote in common territorial constituencies

with Hindus. But they would be given an additional vote to use in separate electorates for election of representatives from their own community. While anyone eligible could stand as candidate for the suffrages of the general electorates, only members of the communities concerned would seek the suffrages of the communal electorates.

Liberal purists might jib at the grant of additional votes to members of minority communities. It would offend their standards of equalitarian, individualistic democracy. But it is not against the principles of popular government. Having swallowed weightage in regard to the number of seats allotted to Muslims, they can have no objection to this kind of weightage—which has the grace of saving common territorial electorates for the constitution. And they might take heart of grace from the advocacy of plural votes by that apostle of Liberalism, John Stuart Mill who looked upon this device as one of the defence of minorities against the despotism of the Democracy of numbers. *Vota sunt ponderanda, non numeranda,* says an old Hungarian maxim. Smaller communities, like Indian Christians, might get their separate representation, through organized Associations rather than through territorial constituencies which on account of the dispersion of the members of these communities all over the country are each of them spread over three or more districts. Such a combination of general territorial electorates and communal electorates is the only way of organizing the franchise of the country in the best interests of the country. It makes the general electorate, normal, and the communal electorate supplementary. It allows the latter also to be temporary. For, as and when members of minority communities like Muslims and Indian Christians get elected in sufficient numbers by the general electorates, the *raison d'etre* of communal electorates will grow weaker and weaker until it reaches the vanishing point.

It is only as a supplementary way of representation that special constituencies like those of landlords, Labour, Commerce, Industry should continue. It is only to this limited extent that the new-fangled device of functional

representation may be allowed in the franchise system. We should have more of such constituencies to bring in representatives of professions and occupations that are rarely represented in legislative assemblies, like Teachers—even from University constituencies come to-day lawyers and professional politicians——Civil Servants, other professions and Defence Forces (only retired men may be made eligible). Subject to this restriction, the principle of association should be incorporated in the franchise system of India. All kinds of associations—clubs, institutions, guilds, Universities, societies literary, social, economic—which organize free social life ought to be given the franchise. It is the spirit and practice of association based on freedom and choice that will kill the institution of Caste which is association founded on birth and necessity. And the Franchise System of India may well find room for this spirit of free association.

One of the best features of the present franchise system is the right to vote given to anyone that has served in the defence forces of the country, for if anyone has a right to vote it is he who is prepared to sacrifice his life for his country.

Other franchise reforms that claim to be introduced are the registration of voters by the State, and the treatment of bribery and corruption as cognizable offences. The cry *Register, Register* was all very well in a country like England with a well developed party system, but it is a cry that will not be heard in India. Where there is only one Party, which for various causes is the only popular and organized party, voluntary registration results in electoral advantages to that party. If that active party did not exist the lists of voters would be even smaller. A powerful or rich party or individual may easily recruit supporters. Anyone who has had experience of elections, especially direct experience, knows how much bribery of voters goes on. The return of election expenses does not tell a true tale. Rs. 10,000 has been considered to be a low figure for the cost of election by a general constituency. Both parties and candidates agree to

this common policy of demoralization. And neither can take action against the other, becuse both are tarred. The only remedy is to make electoral bribery and corruption a cognizable offence.

Let us in conclusion remind ourselves of the principles on which the new franchise system of India must be built. It must be a franchise of enlightenment, not of numerical ignorance. As Duvergier de Haurnne, historian of French Constitutionalism, put it, 'An electoral law which assures to all rights and interests a faithful and fruitful representation is much to be preferred, however restricted it may be, to an electoral law, however extensive it may be, which confers upon the masses the doubtful advantage of sanctioning by a blind vote the wills of others'. In the England of Burke's time the number of those that were poliically minded were about 40,000 and in France in 1817 the electors numbered 120,000—and in those times both England and France enjoyed parliamentary government much more thorough than that contemplated by the Government of India Act of 1935 for India. Enfranchisement of the masses is a fine ideal. But translated into reality when the masses are not prepared for it, it becomes not only useless to them but dangerous to the State—and to them. As Cuvier, the famous scientist turned statesman, in the Chamber of Deputies of 1817 pointed out: 'If the multitude were called to elections it would be either venal, or would let itself be subdued by the ascendancy of power and of riches, or would let itself be led away by the seduction of demagogues. In either of the three hypotheses, the end (of a good electoral system) would be frustrated and society would be delivered to despotism, or oligarchy'. The power of Plutocracy in England and the U. S. A. and of Despotism in Germany, Italy and Russia under the regime of universal suffrage bears out the fears of Cuvier.

Secondly, elections must be built on life, therefore on Institutions. The right to elect is not the right of Individuals, it is a right that belongs to Society, to be exercised in the interests of the State. As even Rousseau pointed out, wills

of Individuals cannot be represented as they are so uncertain and individual, but Interests can be because they are fixed and common. And Royer-Collard, the leader of the Doctrinaires of the Restoration says, 'Election belongs to Institutions. It is a fact introduced into government, and not the exercise of a right which precedes it.'

Lastly, electoral systems must ensure the representation of the country and the people as a whole with due regard for the adequate representation of minorities. If, in the words of Burke, the virtue, spirit, and essence of a representative assembly, consists in its being the express image of the feelings of the nation, it is on these principles and devices that it must be built.

THE HYDERABAD FRANCHISE

The Hyderabad Reforms Committee has suggested a new kind of electoral system. It is not an attempt at originality so much as the product of an honest desire to suggest a system of constituting the representative legislature of Hyderabad that will be in keeping with the circumstances of the country and the political condition of the people. It is born also out of a thorough dissatisfaction with the system of territorial constituencies so common and widespread in modern times. This system has led to the representation of numbers rather than of the organic life of the people, of the people counted by the head as atomic units, not as members of living associations of men. Modern individualism has reduced the people of a State into so many atomistic individuals having little or no spiritual or organic connexion with one another. And it is the sum of the votes of these atoms that make up the representation of a people in a national legislature. At the same time modern industrialism has vastly increased the population of cities and added to the numerical and inorganic character of modern representation. And as this system of inorganic representation has been taking place in the *cămpus* of the old historical, territorial constituency, a recent opposition—such as is illustrated in the findings of the Hyderabad Reforms Committee—has begun to be raised.

The territorial constituency is not only historical, but it is based on sound principles. As soon as the world grew out of the city-State into the larger country-State, representative assemblies had to be created if the people were to have any share in the business of government. And the units of representation were the villages or towns or boroughs or counties or communes or provinces or estates. All these were local units. They were natural divisions of the country. And they, on account of the small numbers and the organic unity of the life in each, were good constituencies for representation. The men that these constituencies elected

as their representatives belonged to them and to the social life lived in them. In England, for instance, the counties elected their knights, and the boroughs their burgesses. The modern carpet-bagger would have been hooted out of these medieval constituencies—his very existence would have been inconceivable.

The territorial constituency of those days made real representation possible—representation not only of the people but of the life of the people. And it had the further political merit that as it ensured representation of locality it brought home to the minds and hearts of people the fact of land as the basis of the life of people in a State. Local life, local patriotism, local loyalty based on local land, was a preparation or education for the larger life, loyalty, and patriotism of the State. The local, territorial constituency strengthened the territoriality of the State. And as land varied from place to place, and as towns and villages were notable for a rich variety of life, occupation, and mood, the system of local representation made the representative assembly a replica of the life of the people as well as representative of the people. The territorial constituency, therefore, was built on sound principles and served a political purpose. It ceased to be sound when it ceased to be organic. Numbers and atomism made it useless and harmful as a means of national representation. What is wrong with the territorial constituency is not its territoriality but the loss of the organic character which it once possessed.

The Hyderabad Reforms Committee in its justifiable dissatisfaction with the modern territorial constituency has tried to lop off its soundest part—its local character. It attempts to turn representation away from land and locality—thus twisting the new and richer political life which it wants to introduce into the State, from that strong foundation of political life, the land of the State. It has turned to a new principle of representation—the representation of economic interests. 'Political constitutionalism', we are told, 'if based on territorial representation, does not give to economic

interests in a State as true a representation as that based on such interests themselves.' A greater degree of realism, it would seem, is imported into legislation and politics as a result of this shifting of emphasis to the economic *motif*. Even ethical, linguistic, and religious divisions may be obliterated in the processes of representation if economic interests rather than people are represented.

It is a praiseworthy attempt to make representation real and organic. But economic interests are not the whole reality in political life. Economic interests are not the only interests of political man nor is the national legislature a producer of economic goods. It is good to bring into prominence the economic side of a people's life and to devise means for the promotion of their economic progress. But economics does not and cannot account for the whole life of man. There are other things, like religion, morality, culture, political progress, which a national legislature must provide for and promote. It is good that in a country and among a people like ours economic interests are given such a place in political representation. But to constitute a representative assembly through a representation of economic functions rather than of political life is hardly a political proposal. It is an economic interpretation of politics which is hardly supported by history or contemporary developments. Even the electoral systems of the New State, which pays so much attention to economic life and motives, give no support to the Hyderabad franchise. For both in Fascist Italy and Corporate Portugal there is a National Assembly besides a Chamber of Corporations representative of economic interests. And the National Assembly is elected by the direct vote of the citizen though without the intervention of political parties or the division of territorial constituencies.

Finally, a danger of eventual potency may lurk in the division of a national assembly into representatives of the different classes. These representatives of classes rather than of the people or of the State may acquire a class-consciousness

and a class-loyalty which may prove detrimental to the peace and progress of the State. It is not the least merit of the local or territorial system of representation that the representatives come into the national assembly as representatives of all the classes that live in the locality, which is a sample bit—a cross-section—of the State and its people. What is wrong with the territorial constituency is its modern inorganic character. What the Hyderabad Reforms Committee should have done, therefore, was to have made the territorial constituency more organic than it has become.

Fortunately the Committee and the Government which has passed orders on its proposals have been better than their political creed. In the proposals for the distribution of seats in the Legislative Assembly, provision has been made for the allocation of seats to district boards, district municipalities, and town committees, and to the Hyderabad Municipal Corporation. These can by no stretch of the imagination be called economic interests. But for the district boards and municipalities of such a large State the 6 seats allotted seem to be inadequately few. Nor can the 16 seats allotted to agriculturists be filled up except through territorial constituencies. It would be difficult to gather the agriculturists into associations or corporations and get their representatives elected through them. But this is not necessary. The bulk of the agriculturists are to be found in villages, and they could well be elected through village panchayats—another sample of an organic territorial constituency. Nor can the legal and the medical professions be said to represent separate economic interests. Graduates, one should suppose, are meant to stand for the teaching profession; otherwise one cannot understand the inclusion of graduates as a class that might be represented in any legislature.

Thus the Hyderabad reformers have in practice been better than their theory. While providing for such economic interests as Labour, Industries, Commerce, Banking, they

have tried to make territorial constituencies more real and organic by giving the right of election to living bodies like district boards and municipalities. And if the agriculturists' constituencies were the village panchayats. they would make a large set of territorial constituencies live organisms.

The Hyderabad franchise proposals constitute an interesting experiment in the art of legislative organization. They will be politically useful to the extent to which they depart from the economic theory on which they have been founded.

THE USE AND THE ABUSE OF MAJORITY

One of the principles of popular government as practised in the West that has been treated as axiomatic is the principle of decision by majority. Popular government involves decisions taken, not by a single man, but by a numerous assembly whether in parliament or a public meeting. The very fact that a number of people meet and come to decisions, makes those decisions determined only by a majority—when the decisions do not happen to be unanimous. As Aristotle long ago pointed out decision by a majority is natural and necessary—it is not the result of a contract or agreement. This principle of rule by majority has also been accepted in India by political parties and organizations. It was accepted unchallenged till the other day when certain developments in Indian political experience have made thinkers and actors in the political arena doubt and question whether after all that has happened, this rule and decision by majority is quite the obvious principle that it has been taken to be. This challenge makes it one of the questions that must be taken up early in any discussion on the revision of the constitution.

First of all, let us go to history for preliminary light on this subject, for history is the main source of political wisdom. History, after all, is only the experience of mankind, and experience illumines the road of political practice—and of theory. This principle of decision and rule by majority—so obvious now-a-days, was not recognized in ancient times. Unanimity, not a mere majority, says Jenks the historian of the State, was required to express the voice of the community. The oath of the kindred, the decisions of the village community, the verdict of the jury had all to be unanimous. In mediaeval Europe, alike in craft gilds and parish vestries if there were no unanimity nothing could be done. It is this, says the historian, that largely accounts for the immobility of mediaeval agriculture and craftsman-

ship. Thus, it was in order to get a move on in social and political arrangements that the practice of deciding by majority was invented. Even in the early Parliaments in England it was by a shout that questions were decided, a relic of which is the practice which obtains even now of the Speaker determining in the first instance the vote of the House by the strength of the shout of the Ayes or the Noes. It is only when this decision is challenged that the House proceeds to divide and decide by counting the heads of the majority. Physical force decided when unanimity was unobtainable. But the frequency of parliaments and the growth of the tendency towards peace and peaceful methods of arranging political and social affairs substituted the practice of counting heads for that of breaking heads as a way out of doubt and dispute, so that the history of the introduction of the practice of decision by majority in human affairs shows that it is only as a way of avoiding physical conflict that this device was first introduced and practised. It was not a means of arriving at wisdom or truth. That is the first lesson which the history of majority teaches us.

A second lesson which history teaches us is that this rule of majority can operate only in a homogeneous community. The village Assembly, the Town Council, the early Parliament were composed of people belonging to a single community or a unified people. Or when it was a composite Assembly representatives of different classes as in the case of the English Parliament, or the Etats-Generaux of France or the Diet of the Holy Roman Empire they voted in their separate communities or orders or nations. The decision of a majority of a community of people is like the decision of the Will in an individual. Just as it is only the will of a unified well-bound, compact personality, not of one which is at sixes and sevens within itself that can decide so also it is only a community or a people that is united, harmoniously blended, organically integrated that can determine results by a majority.

And at first when the device of the majority came to be used with a view to decisions in corporate assemblies the

majority had to be a clear and substantial, a real majority. A common rule in mediaeval assemblies was that the majority had to be a two-thirds or three-fourths majority. A narrow majority—a mere majority of numbers—was not considered to be a clear, unequivocal, certain indication of the will of the people assembled. And only a definitely large majority was considered to be an indisputable indication of the will and the desire to change.

Another mediaeval rule was that only when collective or common interests were involved, should the minority be bound by the decision of the majority. But when individual or separate communal interests were involved then unanimity was required. For instance if the property of individuals, or the admission of strangers to membership of a community or corporation were the question it could be decided only by unanimity. In other words the individual had to bow to the will of the majority, only if his individual rights are not injured. But even then the will of the majority had to be expressed in a clear, unmistakable manner, i.e., by a two-thirds or three-fourths majority.

All these rules and safeguards in the use of the device of the majority would twenty years ago have been dismissed as mediaeval lumber. But the experience of the life of minorities in Europe and Asia since the end of the last Great War and the Peace of Versailles have made political observers and critics probe into the popular notion about the rule of the majority. This popular notion about the rule of the majority is that the majority must always and everywhere and in all matters, rule, that a mere bare majority. a majority of one is enough to determine questions not merely of practical political arrangements but of right and wrong. of rights and liberties, of principles and law. This interpretation of the rule of the majority dates. It dates for modern history from the time when the rule of the many displaced the rule of One. It dates from the time of the French Revolution. Democracy and Nationalism were the father and the mother of this interpretation. Democracy was the rule of numbers and nationalism which formulated

the theory of One Nation, One State, would tolerate no liberty or autonomy of minorities. On top of this and before this, the State had ever since the Rennaisance been the presiding deity of the people, competent and able to do all things, change everything, bring in anything. The position of Minorities under the influence of these ideas, was crystallised in the famous dictum—Minorities must suffer.

This principle was just tolerable—for it was no safeguard of liberty or justice at any given moment. It was just tolerable when and where the minority of to-day could become the majority of to-morrow. It was possible only in perfectly unified national States, with a parliamentary, multiple party system of government. But it worked havoc when there were permanent religious or ethnic minorities as in Poland and Czecho Slovakia after the Great War where the spirit of liberty and toleration did not prevail, and where the parliamentary multiple party system went by the board as in Nazi Germany or Fascist Italy or Communist Russia. In post-bellum Europe, the protection of minorities was the concern of more than one constitution and of the League of Nations. India also has experienced and proved the dangers of what may be called the National Democratic interpretation of the rule of the majority. We need not accept the truth of all the allegations made by the Muslim League against the Congress Party's use of their majorities in the provincial governments in order to admit the fact that the Congress majorities in the provincial governments where they had the power ran the principle of rule by majority to death. In their legislative enactments, in their administrative acts, they would not listen to the arguments of opposition, they would brook no amendments, they would not compromise, they would not give nor take. They had the power of numbers behind them and they thought this gave them the right to work their will upon the administration and upon the life of the people. The tragedy of this experience of Congress rule was not so much the harm done to the administration or the economy or the liberty of the people or to the rights and interests of minorities but the fact that

this intensely Indian National Party got this theory of majority rule from the West and swallowed it whole and made a literal, unpolitical use of it. But it has served one good purpose—it has made people re-think their notions about majority and majority rule.

Perhaps, after all, we may learn from history the wise use of majority. We might go back to the view that decision by majority is only a way of escape from the resort to physical force as a means of solving political differences and disputes. Unanimity is the better way where important changes in the system of government or of social life or of the economy of the people are involved. But there is the lesson of Poland to warn us against the danger of insistence of unanimity in all matters, small and great. If unanimity is not possible, then at least a substantial, that is a real majority of three-fourths or two-thirds must be required for all major changes in the laws or the life of the people. The wise old mediaeval rule might once again be revived that only where common or collective interests were concerned should the minority be bound by the decision of the majority, that where communal interests or individual rights are affected the majority can carry its view only with the consent of the minority. And even this is possible only where there is real political unity. Where this does not exist the agreement of the minority with the majority is a *sine qua non* of peace as of liberty. For where real complete political unity is not, the minority of to-day cannot become the majority of to-morrow—permanent majorities will be the order of the day. And permanent majorities, as Guizot observed, will lead either to the abolition of representative government or to the despotism of these majorities. Democratic majorities are as capable of despotism as any monarchy or oligarchy. "Experience" says John Stuart Mill, Liberal and Democrat, "proves that the depositories of power who are mere delegates of the people that is of a majority are quite as ready (when they think they can count on popular support) as any organ of oligarchy to assume arbitrary power and encroach widely on the liberty of private life".

In any case the rights of the minority are as sacred as those of the majority. And the majority cannot be a law unto itself. It has to reckon with the laws of reason, justice and equity. It is not merely English moderates and French parliamentarians that would impose a curb on the power of the majority. Jefferson the great American Democrat, although he thought that the will of the majority must in all cases prevail, required that "this will to be rightful must be reasonable", for the minority possesses equal rights which equal laws must protect, and to violate which would be oppression." Another leader of American Democracy, John Quincy Adams contended against Paine's argument that only the rights of the majority are inalienable, that this was not sound doctrine "for there are certain immutable laws of justice and morality which are paramount to all human legislation". A majority has the power to do as they please but they have not the right to do so. "If the majority" says Adams "go on the assumption that they are bound by no law, human or divine, and have no other rule but their sovereign will and pleasure to direct them" there can be no real security for the rights of the citizen.

All this fear of the dangers of Majority rule has acquired additional reality and insistence because the State has become so active in modern times. The modern theory of State activity requires of Governments not only the performance of the old police duties and modern social duties like the removal of the obstacles to social, economic and moral progress as by means of education, sanitation, the improvement of housing, factory laws and such other means. It requires of legislatures and administrations to introduce whole philosophies of life. Ideologies—ugly word for ugly doctrine —are to be translated into laws and executive acts. Not only Nazi Germany or Fascist Italy or Communist Russia, but even India has had an experience of this new urge to State action. The Puritan ideology of Prohibition which has caught the mind and the heart of Mahatma Gandhi, for Puritans have been his only Christian teachers, has had to be put into legislative effect. Prohibition by State action

has never been in the tradition of Hindu social ethics. It has always been a matter for religious inhibition or social taboo. It was left to Congress Governments to drive it through the legislatures against the views of political minorities that advocated temperance reform by social action in conformity with individual liberty and against the pleading of religious minorities like the Catholics that wanted the use of wine for Mass given to them as a matter of right and not to be subject to the inquisitorial visits of excise officers. But the Congress had the power and it was possessed with this ideology—and therefore it was placed on the Statute books of India.

The first time an attempt was made to force an ideology by means of a mere majority vote it led to a civil war, when the emancipation of the slaves in the U.S.A. was imposed by a majority vote. It is another illustration of the view advanced in this essay that new ideas involving radical changes in the social life or economy of people can be brought in only by unanimity or by force. It incidentally led to the formulation of another safeguard against the abuse of majority by another great American Democrat—Calhoun. He made the distinction between numerical and concurrent majorities. The concurrent majority is an agreement of several, specific majorities, each representing one of the many diverse interests that are included in a large political society. Government by concurrent majority, according to Calhoun, is different in nature from that by majority of numbers. The numerical majority is absolute, it rules by force whereas concurrent majority rules by compromise, since it is in the power of any interest to veto the action of the others and this is according to Calhoun the exact meaning of Constitutionalism. Let us see how Calhoun makes this out. He says "It is the negative power—the power of preventing or arresting the action of the government be it called by what term it may—veto, intervention, nullification, check or balance of powers—which in fact forms the Constitution. They are all but different names for the negative power. In all its forms and under all its names it results from the concurrent

majority. Without this there can be no negative, and without a negative, no constitution. The assertion is true in reference to all constitutional governments be their form what they may be. It is indeed the negative power which makes the constitution and the positive which makes the government. The one is the power of acting, the other the power of preventing or arresting action. The two combined make constitutional government."

How will all these ideas on the interpretation and use of majority help the maker or makers of the future Constitution of India. He or they will have to reckon with and provide for these fundamental facts (1) the imperfect political unification of the people (2) and the growing wish of the Muslims to consider themselves a separate ethnic entity from the Hindus (3) the existence of a number of numerically or politically weak minorities like the Depressed Classes, Christians, the Sikhs and others. Against these facts, the rule of the numerical majority cannot operate—except in exceptional circumstances. Calhoun's device of the concurrent majority may be resorted to in regard to great questions, like changes in the constitution or in the legal, social or economic life of the people. In regard to constitutional changes the votes of the great communities of India—we cannot deny the fact that India is divided into communities, not only Government but the people themselves speak of them—and any day it is an improvement on the old division into Castes—and of the great powers and interests like the Princes, might be taken separately, although discussions would take place in a common assembly. And the majority of the votes of these separate orders would decide the question—although unanimity, by the road of compromise and give and take—would be the better way in regard to such fundamental questions. As for proceedings within a legislative assembly in regard to great changes in the legal, social, or economic life of the people, unanimity should be insisted upon when the rights and liberties of individuals or communities are involved but when common or collective interests are in question the

minority should yield to the majority, but the majority should be a clear real majority—a three-fourths or two-thirds majority. A bare majority would be allowed only when the safety of the State is in danger, to pass a War budget, or to maintain the essential services of the State. It is only for changes in the polity or economy of the State that unanimity or a clear majority of three-fourths or two-thirds should be required. To preserve the *status quo* or to avert danger to the State a bare numerical majority would do. For *salus populi, suprema lex.*

One argument against this way of using the device of majority must be met. Will not this insistence on unanimity or on the three-fourths or two-thirds majority hold up all progress. It will certainly hold up hastily-conceived, scatter-brained, loosely planned proposals. If proposals of progress are worth having, they must appeal to all sections of the people. The experience of our legislative assemblies where generally popular proposals are carried without a division shows that we may rely on the good sense of our representative assemblies for carrying through useful measures unanimously or with a three-fourths or two-thirds majority. Only ideologies will suffer shipwreck under our interpretation of the rule of majority. A scheme of useful industrial education may pass any of our legislative assemblies *nem con.* An ideology like the Wardha Scheme or the Vidya Mandir or Pakistan may meet a stormy reception. And if such proposals are held up till unanimity is reached, would it be a great loss to the State. It is time we cried a halt to this feverish activity of the State. All this attempt at effecting social reform through the State apart from the fact that the social reform effected is anaemic and superficial, saps the liberty and activity of the individual and society, endows the State with vast powers. The omnicompetent State is becoming the omnipotent State. I think we might sacrifice some progress at the altar of liberty. Peace and liberty are more precious things than progress.

It is subject to these safeguards that the principle of Majority can be introduced into the system of Indian Government. The theory of the majority of numbers has

led to loss of liberty in the totalitarian States which were once democratic and where dictators rose to power on the shoulders of these democracies of numbers. Number is something, but it is not everything for if it were everything then the others are nothing. Number was everything in the pre-Hitler Germany, and pre-Mussolini Italy. It was not everything in England or the U.S.A. with their barriers to democracy, their checks and balances of the constitution. Majority not of numbers, says Frantz, the great German publicist of the 19th century and a sturdy opponent of Prussianism, but of powers must govern. And minorities like Age, Learning, Property, Dissent are as much powers as majorities, entitled to recognition and a place in the government of the State. This worship of numbers is something modern. In ancient times, where the democracy of numbers prevailed as in Athens only a small proportion of the free citizens took part in the business of the Ecclesia. Only the men of leisure had time for the business of the deme or the tribe, in the Agora, in the Ecclesia, in the courts. Even after payment for attendance was introduced the number of men that took part in the business of the State was small. According to Boeckh even in times of crisis not more than 8,000 could be found to interest themselves in affairs of the State. It was the Few that governed in ancient democracies. And modern democracies of numbers have had the same experience. The Party Caucus, the Ring, the Boss have managed our democracies of numbers. And they have found a career for the Totalitarian Dictator.

Numbers are to be governed, they cannot govern. Only, the few that govern must come from the Many, their talents opening a career to them wheresoever they come. Multitudes, multitudes were no doubt found in the Valley of Decision, but they came not to decide but to have their fate determined for them.

PROFESSOR COUPLAND'S CONSTITUTION FOR INDIA'

Professor Coupland in the third volume of his study of the political problem of India makes a gallant attempt to get the Indian problem out of the deadlock into which it has been brought by men and circumstances. I call it a galiant attempt reminding me of the charge of the Light Brigade because unbeaten by the formidable difficulties in the way he forges a path through them for his own solution. It is in no irreverant spirit that I say it reminds me of the charge of the Light Brigade. For he suggests the addition of a new storey to the edifice of Indian Government, as if the units of Indian Government, village, taluk, district, province, the centre were not enough, he wants a new unit of government to be added between the province and the centre. And this unit is the Region. India is to be divided into four regions, the North-west, the Central, the North-east, the South and each of them is to have a government of its own with governmental institutions of its own, legislature, executive and administration. And for the government of India as a whole, there is to be a Central Government which will act as the Agent of the Regions. It is in no light mood or for frivolous reasons that Professor Coupland has suggested this new constitutional device. It is from the highest motive—that of concluding lasting peace between Muslims and Hindus—and with the most altruistic purposes for India—the promotion of its social and economic progress that he proposes his scheme. For one of the greatest obstacles to the conclusion of a lasting constitutional peace between the great organizations representative of Hindus and Muslims is the larger number of provinces peopled by Hindu majorities as compared with those peopled by Muslim majorities. How easier can this obstruction be removed than by reducing the major divisions of India to four, divided equally between Hindu and Muslim majorities. The reason why the Muslim League in its present temper

will not accept a central government is that it will be dominated by a Hindu majority in the Legislature and the Executive recruited as these will be from the provinces. What easier method of removing this Muslim objection to the formation of a central government than to reduce the recruiting sources of the central Legislature and the Executive to 4, 2 Muslim and 2 Hindu. You will then have a balanced central government to which the Muslim League can have no objection. And for the promotion of the economic prosperity of India what better plan could there be than the division of India into 4 great Regions determined by the great rivers of India, the Indus, the Ganges, the Brahmaputra and the rivers of the South that have their sources in the Western Ghats. Irrigation and hydro-electric schemes which will even more than irrigation promote the economic prosperity of India are based on rivers and their basins. And these 4 Regions are determined by such a natural feature as the rivers and river basins of India. Therefore these Regions are natural after all, though they may appear new.

Regionalism as a cure for political evils is no new thing. As a cure for Indian political evils it was tossed up for the first time by Sir Mohammad Iqbal, the poet, and by Sir Sikandar Hyat Khan, the Punjab Minister. It is no reflection on Professor Coupland's political resources to say that Regionalism is no discovery of his. For political shrewdness consists not so much in invention of new devices as in adaptation to new needs of old devices. But it may help us to estimate the value of Professor Coupland's suggestion of regionalism for India if we cast a glance over the history of regionalism elsewhere. Regionalism is as old as the end of the French Revolution in the 19th century coming as a sort of reaction against the orgy of centralization indulged in by the French Revolution and Napoleon the faithful child of that Revolution. Against the geometrical division of France into more or less equal territorial divisions called departments for which the mathematical mind of St. Just was mainly responsible, a reaction began in the course of the 19th century which sought the restoration of the old historical divisions of

France, Brittany, Normandy, Provence, Picardy, Lorraine. It found the support of genius in Mistral with his revival of Provencal, later journalistic support in Maurice Barres and scientific support in the geographer Vidal de la Blache. In Spain also in the course of the 19th century, reaction set in against the centralized system set up by Philip II. Catalonia, Galica, the Basque country claimed not only cultural but political autonomy—a claim that found intense expression in the civil war of a few years ago. In Italy also after the Risorgimento and Italian unity, the political and economic differences between North and South, the excessive centralization of the government, the geometrical division of the country into departments on the French model riding rough shod over the historical and cultural and old autonomous units of Lombardy, Venice, Tuscany, Campagna, Naples, Sicily, there has been a reaction towards federal regionalism as a method of decentralization. In Germany regionalism has been advocated as a half-way house towards the unitary State now realized under Nazi auspices. In Russia under the Soviets, Regionalism has been distinguished by particular national and territorial characteristics and aims at cultural, not political autonomy.

This survey of Regionalism gives us the measure by which we may judge Professor Coupland's regionalism for India. The history of regionalism elsewhere shows that it is a plant which needs some growing. It has to be watered, manured and given time; you cannot fire it as a shot which peradventure may find the target you are after. Regional patriotism has to be cultivated if regionalism is to last. And Professor Coupland who realizes what a tender plant Indian patriotism is and how liable it is to blight from separatism, communalism, Hindu Dharma and Pan-Islamism does not seem to be concerned about the cultivation of this regional patriotism which is a condition precedent for the prosperity of the regional idea. Regionalism, to flourish in any country, must respond to the call of history or tradition or culture. Regionalism in France, Italy and Spain seeks a revival of the old historic cultural divisions of those countries. The

Regions proposed by Professor Coupland for India respond to no such Indian idea or tradition. It is based slolely and merely on an economic motive. This economic motivation of political ideas we may expect from Marxian materialism but is surprising from a humanist like Professor Coupland.

Against the constitutional details of his Regional arrangement, serious objections present themselves. Can India bear the political, especially the financial strain and stress of another set of governmental institutions and authorities? Can an Agency-government do the work of a central government—even if it is restricted to the organization of the defence and the foreign affairs of India? Alexander Hamilton of the *Federalist*, whom he quotes with appropriateness on occasions, might have taught him that you can't make a central government—even within its enumerated powers—too strong. 'These powers (those allotted to the central government)', Hamilton said, 'ought to exist without limitations because it is impossible to foresee or define the extent and variety of national exigencies or the correspondent extent and variety of the means which may be necessary to ratify them.' Which quotation brings us to the extraordinary suggestion of Professor Coupland that the Customs Revenue would be sufficient for the defence expenditure of India. A reference to the *Federalist* would also make short work of the idea of the Centre looking for its financial support to contributions from the provinces and of the idea that the army of the Centre would be required only for external defence and not for internal security, that communications would be a central subject only in war-time. This Agency idea prepares one for the proposal to combine legislative with executive powers and functions as in the commercial days of the East India Company. Such a violent break with the traditions of central government as set up in India in the last 150 years will only give us a central government which will be a *puir creetur* of a government especially if it is divested of all 'the ties' which as Burke put it, 'whether of reason or of prejudice attach mankind to their old habitual domestic governments'.

Nor does Regionalism solve the problem of the minorities in the provinces and in the Regions. Hindus and Muslims will still have to live together in the midst of Muslim or Hindu majorities. They are to be left to the good sense of the majorities, due protection having been given by representation in the legislature and with the sanction of the 'hostages' principle, which one may fear to accept as a principle of humane government.

Professor Coupland is more happy and successful in the critical portions of this third volume of his study. The case against Pakistan and the balkanisation of India is well-argued. He makes the good points that insecurity arising out of the partition of India will prevent the rise of democracy and that disunity will prevent India from being the world power which her geographical situation, her population and her resources entitle her to claim. But while on the subject of democracy, he might have reminded the Hindus of the social foundations of democracy and that one cause for the lack of cohesion between Hindus and Muslims is the domination of social inequality in Hindu society. He makes the Anglo-Saxon mistake of confounding political progress with the extension of democracy. But while opposed to the independence of Pakistan he is all for dividing India into Hindu and Muslim provinces. But does a majority of 57 : 43 make the Punjab a Muslim province or a majority of 54 : 46 make Bengal a Muslim Province? These proportions make them mixed Muslim-Hindu provinces. Sudeten-land had too large a proportion of Germans for the Muslim League to quote it as an argument for Pakistan. The case against the division of India into Hindu and Muslim States might have been strengthened by more arguments from history than this student of history cares to use. History has decided that India shall be neither Hindu nor Muslim but Indian. Muslims and Hindus lost the opportunity to make India Hindu or Muslim. And history does not again offer such an opportunity to a people who threw it away once. Geography, Professor Coupland himself acknowledges, makes for the political unity of India. Of the two factors

that go to make a State Land has as much right to be considered as the will of the People. Of course the modern democratic philosophy dating from Rousseau's time tells us that the will of a people can do anything with the shape and constitution of States. But nature has its revenges and its own way of bringing people to a sense of their limitations and the limitations of freedom

That Professor Coupland has not given due value to these considerations alike in his argument for the divisions of India into Hindu and Muslim provinces and his plea for regionalism is probably due to his anxiety to find a speedy and popular remedy for India's political troubles But though one may not like his conclusions, one cannot help paying a tribute to the painstaking research into recent Indian political history, the impartiality and justice towards all parties and sections of thought and action which characterizes his analysis and the independence of judgment, which produces his conclusions. And though a journeyman like myself in the craft of which Professor Coupland is a master has dared to find flaws in his handiwork the craft may benefit from the criticism of the one as from the achievement of the other.

REPRESENTATIVE *VERSUS* RESPONSIBLE GOVERNMENT

One of the rocks on which the Cripps mission in India foundered in April 1942 was the interpretation given to the term 'Cabinet responsibility'. What Maulana Abdul Kalam Azad and Pandit Jawaharlal Nehru meant by 'Cabinet responsibility' was that of a government, representative of the people though not elected by the people to the Legislature, and responsible to the Legislature, untrammelled by the veto of the Crown. What Sir Stafford Cripps meant by it was the responsibility of a government selected from among the elected members of the Legislature, responsible not only to the Legislature but to the Electorate from which the Legislature emanated. He gave to it not merely the legal and constitutional interpretation normally given to it in England, but the most modern and most radical sense in which it may be used. While the Congress had in mind only one *differentia* of responsible government, the English representative had all of them in his mind. With this meaning of responsible government in his mind, it is no wonder that he broke off the negotiations on behalf of His Majesty's Government, because in time of war there could not be such far reaching changes in the constitution. And the representatives of the Congress were surprised at the breakdown of negotiations which were about to sail safely into completion. Pandit Jawaharlal Nehru himself acknowledged that Sir Stafford Cripps 'might have used words and phrases in a sense different from ours'. The moral of which is—define your terms, as the old Scholastics used to advise people going into debate.

Although this particular debate has ended in a fiasco, the constitutional debate as to the future government of India continues. What is the future government of India to be? Everyone—Congressman, Muslim Leaguer, Indian State politician—assumes it must be 'responsible government'. What exactly is this 'responsible government'? As is usual with most English constitutional notions it has never been

legally defined. The notion is one derived from constitutional practice rather than from legal theory. In no British constitutional enactment is the term responsible government used or defined. Only in the Irish Free State is 'the Executive responsible to parliament'. The general principle underlying it, say two modern constitutional authorities, Jennings and Young, in *Constitutional Laws of the British Empire* is that the administration of government shall receive the general support of the Legislature. They also acknowledge that this is a vague phrase and the precise significance of ministerial responsibility varies from age to age. But the fundamental principle of the system is that the government of the country shall be carried on by, or under the control, or, as it is frequently put, on the advice of ministers who are members of the Legislature and who have the confidence of the lower or more popular House of the Legislature. But in recent years 'responsible government' has come to mean a government ultimately responsible to the people. In England ever since the Reform Act of 1867 the theory had come to be held, mainly under the influence of Rousseau's ideas as the constitutional historian May points out, that ministers held office only with the approval of the Electorate. While Sir Robert Peel in 1834, although his Ministry was defeated at the general election, did not resign office until they actually suffered defeat in the newly elected House of Commons, Mr. Disraeli in 1868 and 1880 and Mr. Gladstone in 1874 and 1886 resigned office without meeting Parliament because they had been defeated at general elections. The French theory of *mandat impératif* as M. Esmein, the French constitutional historian, points out, had displaced the good old English theory taught by Burke in his Bristol speeches according to which Ministries were responsible to Parliament as the representative of the people which had not the competence to judge between governments.

The success of responsible government in England holds out no prospects of success if and when it should be introduced elsewhere. For there are certain conditions which must exist if responsible government is to serve the ends of free

government. Complete national unity is a condition precedent. The conception of patriotism must be national and territorial, not racial as in Ceylon or Germany under the Nazis or communal, or religious, or cultural as in India. Not the welfare of a community but the welfare of the country as a whole must be the concern of the electors and the elected. For it is only such complete national unity, such a conception of patriotism, such a political concern that will make rule by majority tolerable and free rule. In the absence of such national unity, rule by majority would be rule by a permanent majority—in India, for instance, rule by Hindus. And if responsible government is to serve the ends of freedom, the majority behind the govrenment must be mobile, must be liable to change. For, as the report of the Joint Parliamentary Committee on Indian Constitutional Reform insisted, there must be a mobile body of political opinion, owing no permanent allegiance to any party and able by its instinctive reactions against extravagant movements on one side or the other to keep the vessel on an even keel. The existence and activity of the Muslim League and the Hindu Mahasabha, and of the Congress mainly Hindu in its membership and which therefore cannot form real political parties, national in their composition and national in their policy, which are another important element in the political organization necessary for the success of responsible government, are hardly conducive to the operations of responsible government in India.

There is still another important political principle that must be generally accepted before responsible government can be introduced in any country. That is the principle of the sovereignty of the people. In India in the struggle against British Rule, political organizations, the Congress pre-eminently among them, have invoked the doctrine of the sovereignty of the people. The report of the All-Parties' Conference of 1928 crystallized this theory in the view that the achievement of responsible government consisted in 'the transference of political power from the people of England to the people of India'. British official

opinion has also taken the line that if there is to be transference of power from England to India it must be from the people and parliament of England to the legislatures and people of India'. Mr. Montagu made this view public when speaking in the House of Commons on June 5, 1919 on the second reading of the Government of India Bill he said: 'In order to realize responsible government and in order to get devolution, on which there is general agreement, you must gradually get rid of government by the agents of Parliament and replace it by the agents of representatives of the people of India. In other words you have to choose your unit of government and you have got in that unit to create an electorate which will control the government'. Now in order to make this principle of responsibility to the people you must have a people capable of having a will and exercising sovereignty. National sovereignty can be exercised only if at all by a nation. That India is not yet a nation, single and united, has been brought home to our minds by recent events—dramatically and compendiously by the Muslims' claim for Pakistan. The discontent of ethnic minorities under responsible government in Czecho-Slovakia, Poland, Yugo-Slavia shows the futility and even danger of full blown responsible government in countries bereft of national unity. Where majorities and minorities are permanent and unalterable, responsible government becomes a delusion, a mockery and a snare.

This theory of the sovereignty of the people requires some examination as so much of the argument for responsible government hangs on it alike in the minds of representatives of British as of Indian political opinion. This theory dates. Rousseau gave birth to it and the American and French Revolutions nursed it. It is embodied in the American and the French Revolutionary Constitutions, and subsequent revolutions have made it strong and powerful. It is based on the principle of Equality which has done so much for social and economic and legal progress. But the Equality on which this political principle of the sovereignty of the people has been based is false and unreal equality.

Whereas true Equality requires that every citizen should have an equal right with every other citizen, to realize his personality and achieve all legitimate ends, false equality asserts equality where none exists. It allows equal political rights to the educated and the uneducated, to the man of leisure and to the man whose time is not his own, to the man of experience in affairs and to the man whose experience is as young as his years.

The consequences of this false theory of equality are the despotism of numbers, the domination of inferiority over superiority, that is, in the words of Guizot, a tyranny of all others the most violent and the most unjust, as latter day democratic experience ending in Totalitarian Dictatorship, which reared itself on the shoulders of the sovereignty of the people. has proved beyond all possibility of doubt. The theory of the sovereignty of the people may have some reality among peoples enjoying complete national unity, widespread education and the habit of political action. These factors do not obtain in India. Even if they did it would be hard to realize it. Rousseau himself dug the grave of responsible government founded on the theory of national sovereignty when he said, 'Will is not represented . . . the moment a people gives itself representatives, it is no longer free, it no longer exists.'

In administration it has led to the cult of incompetence. The theory of the sovereignty of the people has served the cause of Revolution in breaking up the inequality and the despotism of centuries. But it cannot be a principle of government. And as Guizot points out, it is as irrational as the principle of Democracy's antagonist, Aristocracy. Like Aristocracy, says Guizot, it connects the right to govern not with capacity, but with birth, it gives power to those that are born poor. . . . Aristocratic government is the sovereignty of people in the minority, the sovereignty of the people is despotism and privilege in the hands of the majority. Sovereignty of the people has not made for liberty—much less has it made for efficient government. Parliamentary assemblies elected on universal suffrage have exercised no

restraint on public expenditure—the national debt of parliamentary countries has leapt by millions even in peace time, although one of the original duties of the medieval Parliament had been to restrain royal expenditure. Unstable ministries have been the order of the day. And we have Legislatures that cannot legislate and delegate legislation to the administration. The incompetence of the Legislature has led to the activity and consequent power of Bureaucracy.

Are we then to throw up our hands in despair and give up the pursuit of free government—for that, I take it, is the end of all political endeavour in India. No, for responsible government is not the only way to free government. We have seen how it arose, and how it may end. There is an older means of free government. That is Representative Government. And here at the outset we must avoid the English constitutional meaning of Representative government as defined in the Colonial Laws Validity Act and as it operates in certain English cononies, where only the Legislatures are representative and the Executive are nominated by and responsible only to the Governor. 'Representative Government' is used in the old historic sense in which it operated in England till 1867 and as it has operated in the continent of Europe and described and urged by competent political authority.

In the first place the foundations of representative government are other than those of responsible government. While responsible government has been built up on the theory of the absolute and ultimate sovereignty of the people, representative government is founded on the principle of limited sovereignty. While the theory that attributes sovereignty to one entity, whether an individual or a people, is the foundation of despotism, monarchic or democratic, representative government is, as Guizot puts it, founded on the truth that sovereignty belongs as a right to no individual whatever. And his philosophic reason for this is that the perfect and continued apprehension, the final and inevitable imperfect nature. During the Middle Ages in Europe and application of Justice and of Reason do not belong to our

ever after, representative government did not attribute sovereignty to any person or body of persons. The king was not sovereign, he is bound by law, says Bracton. Magna Carta is a curious fellow, said Sir Edward Coke, he will not allow a sovereign. Parliament was not sovereign, because the concurrence of the king was necessary for the making of laws. The people was not sovereign because it was not conscious of itself or of possessing ultimate power. Check and balance of power has been the essence of representative government. Divided and distributed power—not concentrated, power is the principle of representative government.

From the principle of limited sovereignty it followed that the Legislature under representative government does not feel itself bound hand and foot to the people—not even to the electors. The members of a representative Legislature are not bound by mandates from their electors. To quote the *locus classicus* on the subject, Parliament, said Burke, is not a congress of ambassadors from different and hostile interests; which interests each must maintain as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the whole. Once a parliament has been elected, says Brougham, power must be parted with and given over. The electorate, Cornewall Lewis reminds us, as a constituent body cannot exercise the power which it enables its representative or deputy to exercise. Even as late as 1906 Campbell Bannerman, when challenged by *The Times* to get mandates for the South African policy and war reforms of the Liberals said, 'I dislike this doctrine of special mandates and plebiscites—doctrines alien to our constitution and associated in other countries with combinations for the maintenance of arbitrary power'. Nor was Parliament under representative government absolute sovereign over anyone—not even over the Ministry. For one thing Ministers in the Middle Ages were not appointed

all or necessarily from among the members of Parliament. They were answerable, not responsible, to Parliament. They were the ministers of the Crown, as is the constitutional formula even now, not of Parliament. The Ministry under representative government did not become homogeneous till late in its history. It was only in 1696 that Ministries began to be chosen from a single political party. And collective responsibility was an even later achievement. The homogeneity and collective responsibility of Ministers were due to developments of the party system. And Party is not absolutely necessary for the functioning of representative government. The presence of the Ministry in the Legislature is no doubt necessary as they must be there to explain and defend their legislative policy and administrative acts. But they need not be members of Parliament. Such a requirement restricts the choice of Ministers and representative governments will not get the best Ministers as the choice has to depend on the chances of elections and the claims of party. Even the other day a French constitutional reformer, influenced by 'the regime of tyranny, corruption, favouritism, spirit of party', in his country proposed the choice of Ministers from outside parliament 'if suitable men were not found inside.' The instability of ministries in France has become chronic. It has been calculated that from 1789 to 1890 there have been 94 Ministers of Justice, 117 Ministers of the Interior, 90 Ministers of Foreign Affairs, 99 Ministers of Finance, 109 Ministers of War and 88 Ministers of the Navy. This works up to an average of one year for the Ministers of Justice, Foreign Affairs and of Finance, and of less than a year for the Ministers of War. The consequent inefficiency of French Ministers was a matter of course. Nor is the servile dependence of the Ministers on the Legislature essential to representative government. The right of 'cashiering their governors for misconduct' was made much of by the English advocates of the principles of the French Revolution. Burke's reply was that 'the laws of the realm, the subjection of Minisers to these laws, the "constant inspection and active control of frequent Parliaments, the practical claim of

impeachments, constituted infinitely a better security not only for their constitutional liberty, but against the vices of administration than the reservation of a right so difficult in the practice, so uncertain in the issue, and often so mischievous in its conduct, as that of cashiering their governors.' At any rate it is not a fault here or a fault there but the consistent incompetence of the Minister that must call on him the wrath of the Legislature and result in his relinquishing office. Benjamin Constant, the French constitutional orator of the Restoration, deprecated the constant nagging at ministers conferred by the right to move no-confidence votes against members. And representative government does not require that the Ministry as a whole should resign—only the peccant ministers.

The Legislature under the representative system possessing only limited sovereignty, it follows that the Head of the State must have a part in Legislature. It is the peculiar constitutional history of England, which consisted in the war of Parliament against the Crown, that has given this legislative power of the head of the State, the name of Veto. It emphasises only the negative part of this power, and slurs over the positive. He has the right to agree and to differ. It is only under responsible government which requires the sovereignty of Parliament and of the People that the Head of the State is a mere figurehead. It is only as a way out of a deadlock, between the Legislature and the Ministry or Ministers when neither yields to the other under representative government that resort to the Electorate is provided for, by the right to dissolve the Legislature, given to the head of the State. And the ends of freedom are thus secured.

Freedom is further secured under representative government by the requirement that the rule of the majority which must obtain in any system of plural popular government is subject to the condition that the majority is sought among the competent and the capable—not as in responsible government among all those that are adult citizens, irrespective of their capacity or their competence. Universal

suffrage is necessary only to responsible government, for only thus can we have responsibility to the people Majority rule is also, under representative government, subject to provisions for the defence of minorities. The veto of the Head of the State has already been referred to. The Legislature under representative government consists of two Chambers equal in power to each other in all matters, even financial. The English discontent with the Houes of Lords which led to the drastic reduction of its power by the Parliament Act of 1911 was due to the misuse of its power by the perpetual Conservative majority of the hereditary members. And the financial powers of the House of Commons are due to its historical origin. There is no constitutional reason why a second Chamber, well constituted, supplementarily and complementarily representative of the people, should not have equal powers with the other Chamber of the Legislature. A composite Ministry in which all the chief minorities are represented, an independent Judiciary, and the Rule of Law are additional safeguards against the tyranny of Majority.

What India wants is not this or that particular form of government, but free government. It wants popular government, not because that is the only argument for the transfer of power from Britain to India—but because it is necessary for the political education of the people of India. And the conditions and circumstances of India, where only a limited franchise is possible, and where there are permanent religious minorities, and a common national feeling is far to seek, dictate that the form of popular government in India shall be representative government. All the essentials of free government can be secured by it and in it—a representative Legislature, ministers answerable to the Legislature, an independant Judiciary, the rule of Law, freedom of the press, of association, of the individual. It is just because of its limits and restraints, that it is an answer to most of the political difficulties and problems of India. It may even be an answer to—Pakistan.

FEDERALISM OR PARAMOUNTCY

THE CHOICE BEFORE THE PRINCES

The *demarche* of the Princes at their Bombay Conference of June 1939 makes one wonder whether the Princes or their representatives when they so enthusiastically welcomed and insisted on Federation at the first London Round Table Conference eight years ago, had any idea of the implications of federation. And this is not the first time they have shown a desire to recede from the position they took up then.

The substance of their grievance against the Draft Instrument of Accession is two-fold: first that their sovereignty will be unduly reduced and that their Treaty-rights will not be adequately safeguarded; and, secondly, that their revenues are liable to be diminished. These fears seem to arise from a naive apprehension of the implications of federation. Every federation involves the reduction of the sovereignty of each of its units. And every federation is founded on the division and allocation of sources of revenue. No unit of a federation can expect to be as sovereign after federation as before or to command the same sources of revenue as before, just as it will not be called upon to incur the same expenditure as before. A little more knowledge of history and a little less legalistic advice and interpretation would have helped the Princes to come to sound decision on a matter that is charged with importance not only for them and their States but also for India.

The history of federation offers an excuse, though not a reason, for the Prince's doubts and hesitancy. For it was not without an effort and not before much argument and persuasion that federations have been formed anywhere. Alike in Switzerland, in the U. S. A. and in the British Dominions the federal idea and constitution was not born without pains. In Switzerland, apart from the fact that it took centuries for Confederation to be transformed into Federation, even when federation was finally decided on in

1848, it was only after some further time that some of the most important principles of federation were accepted by the people. For instance, the constitution of 1848 had left much liberty to the cantons in the field of military organization, and military organization became centralized only much later. Similarly in regard to religious as well as economic policy, federal legislation became dominant only by the time of the revision of 1870. In the U. S. A. federalism won the battle only after months of wearisome discussion at the Constitutional Convention of Philadelphia. Till 1866 when the issue was settled by war, the North and the South suspected each other of deriving more benefit from federation. Nor was the battle for federation less long-drawn in Canada and Australia. It was not without reluctance and compromise that federation was enacted. The Princes, therefore, have reasons for their alarms and excursions in regard to federation. But they have no reason for their behaviour. For there is the whole history of federation to show them that once they have agreed to federation there is need for giving and taking, for compromise, for striking a balance between advantages and disadvantages and enjoying the mean profit.

What is their objection to federation? It is that their sovereignty will be reduced. This attitude is hardly fair to the Government of India Act. One of the objections to the federal system framed in the Act raised by critics in British India is that the States get undue privileges and rights such as are not given to constituent units in other federations. The 'weightage' given to them in the federal legislature; the right given to them of choosing the subjects beyond a minimum of 49 on which the federal legislature can make laws binding on the States; the choice given to them even within the minimum, provided it does not defeat the objects of federation: the provision for the administration of federal laws in the States by State authorities; the retention by the maritime States of part of the revenue derived from customs duties levied at their ports—these and other deviations from the more usual federal system ought to show the Princes how

much has been done to make their sovereignty compatible with federation.

And what is this sovereignty of which they make so much? Is it greaer than that of the States which united to form the U. S. A.? They were independent, enjoying full rights of sovereignty—the right to make war or peace, to send and receive ambassadors, to levy customs duties on the goods of each other and of foreign States, to have their own armies and navies. Is their sovereignty greater than that of Saxony or Bavaria before they joined the German federation? And what is sovereignty under Federation? No one is fully sovereign in a Federal State. The sovereignty of the units is limited by the sovereignty of the Federation. and the sovereignty of the Federation is limited by the sovereignty of the States. The Princes might derive consolation from Dicey's view that 'every legislative assembly existing under a federal constitution is merely a subordinate law-making body where laws are of the nature of bye-laws, valid whilst within the authority conferred upon it by the constitution, but invalid or unconstitutional if they go beyond the limits of such authority'.

Federalism will not bring about any substantial modification of the sovereignty the States already possess. They will still be autonomous in regard to internal government. The Federation will not interfere with their internal legislation. administration, and judicial organization. But as they become parts of a larger State, they will have to submit to the legislation and administration organized by this larger State and directed, not against them in particular, but towards the welfare of the whole. This is no doubt a further limitation of their sovereignty. But it is not fundamental—there will be a difference in degree, not in kind.

And the Princes might remember that the whole theory of sovereignty has changed in recent times—even while they have been worrying themselves over the future of their sovereignty. Time was when people believed in the absolute sovereignty of the State. But that theory is almost universally rejected now both in the schools and in practice. Law,

either national or international, is no longer considered to be an arbitrary decision of the will of the State. It is called for and made by the social facts which constitute the basis of law. Sovereignty has come to be looked upon, not as a thing in itself, as the Hegelians claimed, but as a function of social life. The sovereignty of a State is now thought to depend on the social service it is able to render. A great French jurist, Le Fur, has justified the sovereignty of the Papacy by the service it renders the world. And if the Princes want to preserve their sovereignty in its essentials, they must rely, not on parchment or Instruments of Accession, not even on amendments to the Government of India Act, but on the service they render their States and India. And Federalism offers them such opportunities for service such as they have not known so far.

The alternative to Federalism is the continuance of Paramountcy. For the last ten years we have listened so often to princely denunciation of Paramountcy that one finds it difficult to believe that the Princes are willing to continue to live under its regime. They got eminent counsel to give an opinion denouncing the one-sided and interfering manner in which Paramountcy had been used, and placed that opinion before the Indian States Enquiry Committee of 1928-1929. Books by the dozen have been written to spread this view. The Indian States Enquiry Committee have laid down the principle, adopted by the Government, that 'Paramountcy must remain paramount'. They have refused to accept the theory put forward by the Princes' learned counsel from England, that the relations between the States and the Crown form 'contractual relationship' involving certain defined mutual rights and obligations beyond which the Paramount power cannot go. The Princes themselves and through their spokesmen have time and again deplored the vague, uncertain, ill-defined, extensive powers which have been used by the Paramount Power in regard to the internal administration of their States. Imposition of unwanted standards of administration, interference with succession, deposition have been cited as undue use of

Paramountcy. Treaties, upon which they set such store when they are asked to enter federation, have been treated, so one of the books written in their defence says, as 'scraps of paper'. And it is in this Valley of Humiliation they would remain as a possible escape from what they consider to be the Slough of Despond of Federalism.

For Paramountcy is the only alternative to Federalism. The States that do not enter federation at all will in regard to all matters of government continue to be under the regime of Paramountcy. The States that enter federation will, in regard to the 49 or so subjects of administration on which they agree to federate, be free from the attentions of Paramountcy. The Joint Committee of the Lords and the Commons on Indian Constitutional Reform, upon whose report the Government of India Act has been based, pronouncements of Sir Samuel Hoare, and the Government of India Act have made it plain that Paramountcy shall not apply in respect of the subjects on which the States agree to federate. These subjects constitute some of the most important subjects of national administration. The other ten subjects on which their accession to federation need not depend yet include such subjects as jurisdiction and powers of all courts except the Federal Court, establishment of standards of weight, migration within India, so that they might be persuaded to join in regard to these. Only certain taxes and duties, like the taxes on income other than agricultural income, they might like to keep for themselves. But would they prefer the jurisdiction of Paramountcy to the sovereignty of a Federal Legislature from which at least they might expect grants-in-aid or subventions? And if they federate in regard to the concurrent list of subjects, the area of the acivity of Paramountcy might be still further restricted.

Paramountcy will remain in regard to the purely internal subjects of administration. But that will be used as a sanction of good government—not as a policy of relationship between the States and the Crown. And Paramountcy will be used as a sanction for the obedience of the States to federal legislative and executive authority in regard to the

subjects on which they federate—as was acknowledged by Sir Samuel Hoare and other men in authority during the discussions on the Government of India Act. If Paramountcy is to disappear as a sanction of internal good government, the Princes must create an alternative sanction. The Indian States Enquiry Committee suggested that intervention of the Paramount Power has been found necessary to ensure good government, and there is more than a hint that if good government were ensured by the conduct of the Prince and by his satisfaction of popular demands for a change in the system of government, intervention by the Paramount Power would not be necessary. Historically, Paramountcy came in as a sanction of good government in the States when that other sanction, popular resistance, had been eliminated by the guarantee given by the Paramount Power against rebellion or insurrection. And if Paramountcy as a sanction in federal government is to disappear, it can only be by the Princes and their governments accepting the sovereignty of the federal Government, as more autonomous and more independent States than themselves have heretofore done.

Federal sovereignty will displace Paramountcy. It will be sovereignty higher than their own in regard to a few matters of national importance. But, unlike the sovereignty of Paramountcy, it will be bound by law, discussed *coram publico*, and asserted on the strength of federal needs and in the interests of national security and welfare, and exercised by authorities of which the Princes and their States will form an *integral* part through their representatives in the Federal Legislature, Executive, and Judiciary.

A MODEL CONSTITUTION FOR INDIAN STATES

The imminent coming of Federation has induced a number of Indian States to set their houses in constitutional order. Committees on Constitutional Reforms have been set up in more than one State to report on the changes that may well be introduced into their systems of government. It is in the belief that there is nothing like public discussion to hammer out the best political arrangements and in the hope that discussion even in British India may help the Indian States in their search after a new constitution, that this sketch of what such a constitution may be is offered for consideration by all those that are interested in the welfare of Indian States.

Every constitution hangs on one dominant political idea, to which it owes its origin and from which it derives its strength. The constitutions of the West derive their life and sustenance from the principle of the sovereignty of the people. The constitutions of Europe and of America owe their origin to a struggle between the original holder of supreme power—the king and his own people, or between one ruling people and another subject to it. And so in all these constitutions the sovereignty of the victorious people is recognized as a fundamental maxim. In British India, the new constitution is also partly the spark of such a clash, but largely it is the grant of one people to another. For the fact that the Government of India Act of 1935, like its predecessors, was given by an Act of the British Parliament and not by a Convention of the Indian people, and the fact that important sections of the people have not accepted it, prove that the sovereignty of the people is recognized only to a small extent in the Indian constitution.

But in the Indian States the sovereignty of the people does not obtain even to this small extent. Alike in the States of Hindu rulers and of Moslem rulers, the sovereignty of the Prince has ever been the fundamental political idea. What

the Seal Committee on Constitutional Reforms in Mysore called the 'basic tradition of the sovereignty of the Head of the State as the one original organ as regards all functions, legislative, judicial and executive', obtains in all 'Hindu' States. And as for 'Moslem' States, the 'ultimate control and authority' and the prerogative or absolute power of veto which the reigning Nizam of Hyderabad spoke of in the *Firman* introducing the constitution under which Hyderabad is at present governed, leaves no doubt where the ultimate sovereignty lies. But at the same time the constitution of the States has to be changed in keeping with the federal system of government which the Princes through their representatives have accepted. It is one of the basic principles of Federation that the systems of government that prevail in the several States of the Federation should be in essentials as similar as possible. And the principle of representative and limited responsible government having been applied to the British Indian provinces, the governments of the Indian States have to be brought into approximation to them, regard being had, of course, to the fundamental political idea of the Indian States, i.e., the sovereignty of the Prince. Therefore, any proposals for constitutional reform in Indian States ought to be loyal to the principle of the sovereignty of the Prince and also conform to the new circumstances of an Indian Federation.

The Indian States are remarkable in nothing so much as in the great differences between them in regard to the character of their systems of government. This great variety may, however, be concentrated into two chief classes; those in which the arbitrary will of the Prince is undisputed in all cases and those in which it is made use of in extraordinary circumstances and as a last resort, in the ordinary administration of the State the authority of the Prince is exercised by other men or institutions, whose powers and relations to the sovereign are defined and limited. It is obvious that there is a difference of kind, and not merely of degree, between the two systems—the difference between arbitrary rule and a constitutional system.

The first step towards constitutional progress has yet to be taken by the States belonging to the first class. What that step should be was indicated to the Princes by Lord Irwin in 1931 when he was Viceroy of India (the fact that he addressed these suggestions to the Chamber of Princes showing that a considerable number of them had still to adopt them). He said that the irreducible minimum of constitutional progress in Indian States should be:

1. a reign of law 'based either expressly or tacitly on the broad goodwill of the community';

2. individual liberty and rights protected and the equality of all subjects of the State recognized before the law; to obtain this;

3. an efficiently organized police force and a competent judiciary secure from arbitrary interference by the Executive and irremovable as long as they do their duty;

4. limitation on the personal expenditure of the Prince, so that as large a proportion as possible of the State revenues may be available for the development of the life of the community;

5. some effective means of ascertaining the needs and desires of the subjects and of keeping close touch between the Government and the governed;

6. religious toleration;

7. choice of and trust in good councillors.

A few States—fifteen—have already taken this great step forward towards constitutional government. The question that arises now is: what further steps should all those that desire to join the Federation take, so that their systems of government may be brought into harmony with the system of government in the provinces and in the centre of the Indian Federation? When a system of free and representative government has to be introduced without the intervention of the *deus ex machina* of revolution, the introduction has to be guided by two directions. In the first place, as Sismondi, student and observer of the revolutions of Europe and the constitutions based on them, pointed out in his *Etudes sur les constitutions des peuples libres*, a people

not used to representative government must learn to initiate themselves into and teach themselves the art of managing public affairs. Secondly, they must arrange for the triumph of political reason in the formation of public opinion by giving time for that public opinion to be matured in due course of time.

One of the most effective means of training a people to conduct public affairs and to raise their view above their own individual or family or class or caste interests, is the formation of popular institutions of local government. Only in a few Indian States are institutions like District Boards and Village Panchayats found. As a first step towards representative government, these institutions of local self-government must forthwith be established—District Boards in the larger States and Village Panchayats everywhere. And they must be endowed with authority to manage their local affairs—roads, wells, sanitation—and to tax themselves to find part of the money needed for such administration. While enjoying a large measure of autonomy, these local bodies must be subject to the inspecting and overseeing authority of the central government. While powers of administration and taxation should be restricted to the local affairs proper to them, these local councils should not be debarred from making representations to the central government on the affairs of the State. In the absence in most Indian States of organs of public opinion, like widely circulated newspapers, these local councils would serve as an efficient medium of public opinion. The people of the States more than in British India live in the villages and in the districts, and unless. to use the words of John Bright, 'the light of your constitution can shine there, unless the beauty of your legislation and the excellence of your statesmanship are impressed there on the feelings and conditions of the people, rely upon it, you have yet to learn the duties of government'.

The second reform which would give the people political education and which would develop in them knowledge and

respect for law—for constitutional government is government by law—is to give them a share in the judicial power. A first step in this direction is to give the Village Panchayat the power to dispose of small offences or civil suits. Later, although the jury system is foreign to India ,the native and historic system of assessors chosen from the people to. help the judge in coming to a decision on matters of fact, their view not binding the judge unless it is unanimous, might be tried as a means of making the people interested in the administration of the law.

A third means suggested by Sismondi of training a people in self-government is the formation of national guards or popular militia. Although Treaties may prevent Indian States from resorting to this means, the object may be achieved if from the armies or troops or police forces that belong to any Indian State no one is excluded by reason of his religion, or community, or social or economic status. Participation in the defence of public order is an effective means of political education.

The formation of a public opinion that is at once enlightened and national is absolutely necessary for the success of representative government. And to bring this about, freedom of discussion must obtain. A public opinion that emerges from supervised or controlled discussion is not worth having, for it would not be the opinion of the people. But absolute freedom is nowhere possible. It must accompany order, that other need of the State. Freedom is relative, and the degree of freedom of discussion obtainable in any State depends on the character, the circumstances, and the sense of the people of the State. Much greater freedom of discussion is possible in England than elsewhere, on account of the tradition of freedom in which the people have lived, their cool, almost cold-blooded temperament, and their sense of humour. In the absence of these conditions, the freedom of discussion allowed in Indian States must be limited.

To take first the freedom of the Press, greater freedom may be allowed in the publication of books than of periodical

newspapers. Books have a limited circulation, they are generally published in India at the expense of the author, and they cannot therefore create the agitation and excitement in the minds of the common people that the daily or weekly newspaper can. Books may be allowed to be published at the author and the printer's risk of contravening the ordinary law of the State and without being subject to any system of restriction. The case of the periodical newspaper is different. Printing being so cheap in India, it does not require much capital to start a vernacular newspaper. The number of people a newspaper can reach is much greater than those that are literate. For one man that can read in an Indian village, there are fifty that can listen to its being read out. Not much literary talent is required to edit such a newspaper. The danger to public peace of the unlimited freedom of the newspaper in a State that has not been used to freedom of discussion is obvious.

The limited freedom allowed on the Continent of Europe would not be out of place in an Indian State. The deposit of a certain sum of money with the Government, which is liable to confiscation after repeated offences against the decencies of public criticism; the publication of the name of the responsible editor from whom a minimum educational qualification might be required, and of the printer in some prominent part of the newspaper; the dependence of the continuation of postal facilities or concessions on decent, not good (for the two attributes are different) behaviour; the public audit of the balance-sheet of the newspaper—these are some of the means of restricting the freedom of the Press in the interests of that very freedom—for disorder may lead to total suppression—in States whose people are for the first time being introduced to it. Freedom of meeting must, for the same reason, be subject to similar rules that will not make public meetings difficult but will make them a peaceful arena of constitutional discussion.

The most important arena of public discussion is a free State is the Representative Assembly. Its number must be determined by the requirements of parliamentary discussion.

It must not be too large for efficient debate nor so small that it would succumb to intrigue, to the private and invisible influence of the Executive, and to the leadership of the mediocre. To deserve its name and fulfil its purpose, it must be as representative of the people as possible. And if the representation is to be real and living, it must be secured by the action of groups and communities and corporations and not by the activity of mere individuals. British India under English influence has chosen to have its representative assemblies filled by the votes of atomistic individuals. There is no reason, except the fashion of imitation, why Indian States should adopt this method. Men live their social lives, not as separate, solitary individuals, but as members of groups or corporations or communities. These, therefore, must be made the constituencies of the Representaive Assembly in the Indian State. The Village Panchayat would be one such constituency. Trade guilds or corporations, associations in which minorities organize themselves, associations of professional men, like Advocates' Associations, Medical Associations, Teachers' Guilds, should be given the right to elect their representatives. Similarly, the municipal councils of towns and cities. The principle governing the grant of the right to elect members of the Representative Assembly is that it should be given to organic living bodies rather than to individuals.

As for the powers of this Representative Assembly, the first and the most important that it should get is the right to discuss all the public affairs of the State. It is the People's Council, and the Grand Inquest of the State should take place there. No affair of State should be excluded from its purview. The right of asking questions about the administration and the right of initiating discussion and moving resolutions on all the affairs of the State should be given to it—subject, of course, to the right of the Executive, which obtains in the most advanced of parliamentarily governed States, of refusing information that may be detrimental to the State. This right of inquiry and of publicly

discussing the affairs of the State is the first and the most powerful means of constitutional and parliamentary government.

The other powers of the Representative Assembly, like the right to grant taxes, or the right to influence and control the formation and activities of the Executive, will soon follow. For it would be difficult for an Executive to continue for long the imposition of taxes or the incurring of expenditure without the approval of the Representative Assembly—especially if the Assembly is thoroughly representative of the people. And when this criticism of the acts of omission or commission of the Executive is supported by the local bodies in exercise of the right of discussion on all public affairs that according to the scheme of this article has been given them, this volume of opinion would be found irresistible even by the Prince and Executive of an Indian State. It is in this way, by dint of frequent resolutions on the Budget and other acts of the Executive, that the Representative Assembly would gradually acquire the right of controlling the taxation and expenditure and the life and activity of the Executive.

And when they come, must these other powers of the Representative Assembly be absolute? They are supposed to be absolute in the system of popular government that is known as Responsible Government, so widespread in the British Empire and now introduced in British India. But the advocates of Responsible Government for the Indian States seem to forget that it is unknown in such popularly governed countries as the U. S. A. and Switzerland. It is the product of the history of England, of the centuries-long conflict between the Monarchy and the Parliament. It requires a vigorous two-party system, a persistent habit of compromise, and the theory of the sovereignty of the people as the fundamental principle of the constitution. Where these conditions of Responsible Government do not obtain, it is the solecism of popular power to introduce it.

With regard to parliamentary control over the Budget of the State, a large portion of the annual Budget in England.

known as the Consolidated Fund, is not usually touched by Parliament. The essential services of the State are thus ensured. Corresponding to this may be reckoned the land revenue of an Indian State. This accrues to the Prince as the supreme landlord of the State. And from this he should be able to find his Civil List and the irreducible minimum of expenditure on the services and for the essential needs of the State. Besides, that land revenue was by a Joint Committee of Parliament left to the provincial legislatures, it has not yet been so dealt with, shows how hostile land revenue is to legislative treatment. It must therefore continue to be managed by the Executive—subject, of course, to the scrutiny and criticism of the Representative Assembly.

Apart from land, the other sources of revenue that are taxes may be left at the disposal of the Representative Assembly. These and other powers of the Assembly may be acquired by it on grants made by the Prince after he is convinced that the Assembly and the people are equal to it. This he may find out from repeated (say, two or three) resolutions passed by sufficient majorities of the Assembly and of the local bodies.

With regard to the power of the Representative Assembly to influence the composition of the Executive, all that popular representative Government requires is that the Executive should govern in harmony with the Representative Assembly, not that it should be dependent on the latter every moment of its life. To secure this end it would be enough if the Ministry were appointed by the Prince out of a panel of double or treble the number of ministers required for the State elected by the Representative Assembly. And once appointed they should be allowed to go on for the whole term of the Representative Assembly, which may be 5 or 7 years—subject to votes of No-Confidence moved against individual Ministers not more frequently than once a year at the time of the presentation of the Budget, which if passed by a majority of three-fourths may lead to the resignation of those Ministers. The practice

of collective responsibility is peculiar to Responsible Government worked with the party system. The party system is a special product of English history and life, and we have no right to expect it to be reproduced in India. Switzerland has got on very well in popular government without it. And we also can get on very well without it.

As regards the representation of the State in the legislature of the Indian Federation, this also may be secured by the Prince selecting from a panel of double or treble the number of representatives allotted to the State, from the Representative Assembly in the case of the Federal Assembly, and from the Legislative Council in the case of the Federal Council of State, either election being by the system of the single transferable vote.

A further question remains to be answered in connection with the Representative Assembly: whether it should consist of one or of two Chambers. The world owes the bicameral system to English history and the experience of its utility elsewhere. But Indian States need not closely imitate England and Europe and the U. S. A. in their adoption of the bicameral system. Some of them, like Mysore and Travancore, struck out a new path when they established a Legislative Council by the side of the Representative Assembly. The Legislative Council was to hammer out into efficient legislative Acts the proposals of legislation passed in the Representative Assembly. The present writer advocated an extension of this device in his book, *The Making of the State*, for parliamentary experience in the last 50 years has proved beyond doubt that the large representative Parliament is ill-equipped for the technical business of legislation. The States that have used this new invention may be encouraged to keep it by the fact that that great authority, John Stuart Mill, advocates it in his *Representative Government*.

Its composition would be dictated by its relatively technical purpose. It would be composed of men that would help in the making of good laws. They would be not merely or all experts, but men who have had the training that will

make of them good legislators without losing their character of representatives of the people. It would be composed, for instance, of retired officials of the State drawing a pension of Rs. 300—500 and above, up to the age of 65, presidents and members of Committees of District Boards and Municipalities, a representative elected from the Bar of the capital and of the districts, from those that have acted as honorary magistrates and assessors in the courts of the State. To infuse a representative element in the Council, a certain proportion should consist of members elected by the Representative Assembly, provision being made for the due representation of minorities. The Prince would also have the right of nominating a small number that would in his opinion add to the representative character and accomplish the legislative purposes of the Council. The number of the Legislative Council should in no case exceed 50, and for most States it would hover about 30 or 40. As for the relations between the two Houses, there is little danger of a clash, because their functions are different. The Legislative Council would only give legislative form and efficacy to the proposals of the Assembly for final approval, and any persistent difference of opinion as to the legal form given to the ideas of the Representative Assembly may be resolved by the arbitration of the Prince, who for this business may take other advice than that of his Ministers.

All these reforms would have to be introduced and worked without detriment to the fundamental political idea of an Indian State—the ultimate authority and sovereignty of the Prince. The new institutions and their powers and functions will no doubt reduce and limit his activity and authority in ordinary circumstances. Ordinarily and normally, these new institutions and the Prince would work in co-operation with each other, he assenting to their requests and getting their wishes carried out by his Ministry, and they passing laws and proposals for taxation and expenditure that he and his Ministry may make for the government of the State. But as he is the ultimate sovereign of the State, he would have the power—he has already the right—to pass

such laws as he may not be able to get through the Representative Assembly or the Legislative Council. He would also have the right to refuse his assent to any proposals or acts emanating from either House. The Prince is not a constitutional *roi faineant*. He has not been reduced to that position by revolution or by a struggle with the people. He will therefore be a co-efficient, a partner in government. He will be the servant of the State, not of the people or their representatives.

This is an outline sketch of a constitution of an Indian State formed with due deference to the fundamental political idea of the ultimate sovereign authority of the Prince and the wish to introduce a popular representative form of government required by the policy of federation with British Indian provinces. It is not an ideally perfect constitution. When Solon was asked whether the constitution he had framed for the Athenians was the best, he replied that it was the best for the time and the people for whom he was asked to legislate. Nor is this constitution like that recently given to British Indian provinces. This new model of a constitution shows great deviations from the principles and practices of that other one. But those that may be persuaded to adopt some such constitution as the one suggested here may answer with Pericles: 'Our form of Government does not enter into rivalry with the institutions of others; we do not copy our neighbours'; not for the self-conceited reason given by the Greek statesman that 'we are an example to others', but for the more political reason that the conditions and circumstances of the two parts of India are different and therefore call for different systems of government. All that, the common purpose of the British provinces and the States in the Indian Federation requires is that these systems should not be hostile to each other.

PREAMBLE TO AN INDIAN STATE CONSTITUTION

Now that many Indian States have taken up the question of constitutional reform, and some of them have reached the stage of framing legislation to put their constitutional ideas into legal terms, it may be timely to follow up the last article on constitutional reform in Indian States with one on a subject that will have to be dealt with at the very outset by the framers of any constitutional Act.

Preambles are at the very foundation of a legislative enactment. They contain the idea, the cause, and the purpose of Acts. The preamble of a statute has always been held to be 'a key to open the mind of the makers as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the statute.' This principle follows from the universal maxim of judicial interpretation 'that the will and intention of the legislature is to be regarded and followed'. Where doubts or ambiguities arise upon the words of the enacting part of an Act, a resort to the words of the preamble to find out the will and intention of the makers of the Act is clearly indicated. As of ordinary statutes, so of constitutional laws, preambles form an essential part. They have been used by statesmen and jurists in the exposition and interpretation of the provisions of constitutional laws. In the U. S. A. the preamble of the constitution has been often used by judges of the Supreme Court in the interpretation of the constitution.

The use of the preamble in political discussion or judicial interpretation is subject to rules that govern such interpretation. A preamble cannot be made to give more than it contains. It is a preamble and nothing more. It only reveals the intention and purpose of the Act as a whole and of its several provisions. It cannot be used to extend or narrow the scope of any power or authority created by any provisions of the Act. As Judge Story says in his *Commentaries on the Constitution of the U.S.A.*: 'It cannot confer any power

per se; it can never amount by implication to an enlargement of any power expressly given; it can never be the legitimate source of any implied power, when otherwise withdrawn from the constitution.' Its true office 'is to expound the nature and extent, and application of the powers actually conferred by the constitution and not substantively to create them.'

Subject as preambles to Constitutional Acts are to these rules of interpretation, there can be no doubt that they form an important part of the laws they introduce. The practice of constitution-makers supports this view. One of the earliest of European constitutions, that which first laid the foundations of Switzerland on August 1, 1291, after invoking the name of the Lord makes it known to all 'that the men of the valley of Uri, and the commune of the valley of Switz and the community of the mountain men of the lower valley (*Unterwalden*), considering the malice of the times and in order that they may better defend themselves and preserve themselves better in their rightful status, have promised to enter into a treaty of mutual assistance and help and counsel.' The constitution of the U. S. A. begins with this splendid and stately preamble: 'We the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.' The Dominion constitutions of the British Commonwealth have followed the example of the great model of constitutions. The Act which brought the Dominion of Canada into existence begins with a preamble which beside other things refers to the two most important purposes of the constitution thus: 'Whereas the provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom, and whereas such a union would conduce to the welfare of the provinces and

promote the interests of the British Empire . . . be it therefore enacted and declared. . .' In similar fashion begin the constitutions of the Commonwealth of Australia and of the Union of South Africa.

A notorious exception to this practice in constitution-making is the Government of India Act of 1935. It has come out without any preamble at all. Curious but unconvincing arguments have been used to support this departure from usage. One argument was that 'Dominion status' could not be put in the preamble, and therefore no preamble was possible. While there may be arguments against the insertion of 'Dominion status' as the object of the Government of India Act, for Dominion status is a fluid condition, never the same thing at different times, and incapable of legal definition, there are other objects than the attainment of 'Dominion status' which the Government of India Act of 1935 had in view. There is the progressive realization of popular and responsible government which is the unavowed purpose of many of the provisions of the Act, and there is the grand objective of federation for all India—two objects which would have received universal approval, which could be put into legal form—for it has been done before—and which would have been worthy of a great act of constitutional legislation.

But even the framers of this Government of India Act could not do without a preamble. And so they have saved for this Act the preamble to the Government of India Act of 1919 from the effects of Section 321 of the Act of 1935 which repeals the Act of 1919. This was done to allay the fears and suspicions of those that looked for a preamble and saw none, lest the objects of the Act of 1935 were not to be those of the Act of 1919. Thus 'the increasing association of Indians in every branch of Indian administration and the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire', is also the objective of the Act of 1935. But there is not a word about Federation. This curious shyness about the preamble

is also illustrated in the fact that in the official editions either of the Act of 1919 or of the Act of 1935 the preamble is not printed at all. The present writer had to hunt up the words of the preamble of the Act of 1919 in a quotation from the first volume of the Simon Commission Report of 1930. Thus through lack of imagination and a word-shyness so characteristic of Englishmen, a great opportunity was lost of collecting enthusiasm for an Act which was not altogether fortunate at its birth.

One may be allowed to hope that this mistake—which is a mistake not merely in draftsmanship but in statesmanship—will not be made by the makers of the new constitutions for Indian States. They would do well to preface their constitutions with good, attractive, and telling preambles. But any preamble will not do just because it looks good and attractive. A constitutional preamble must be in keeping with the constitution to which it is a preamble. It must proclaim the will and intention of the makers of the constitution. It must hold in concentration the principles of the constitution. It must in memorable words advertise the object of the constitution. It must in compact but comprehensive phraseology embody the spirit of the constitution.

What is the will and intention. the objective, the spirit of the constitutions of Indian States? We have already seen that the objective and goal of these constitutions may not be the same as the constitution of British India. In British India as in England the objective of the constitutional process may be responsible government, because the process has taken the form of a long-drawn-out struggle between the British holders of power and the Indian claimants. When power had to be devolved from the former wielders of power, it had to fall into the hands of the people, because they were the other party in the struggle and there were no other possible legatees. In Indian States there has been no such struggle. The move for a change in the system of government has been made by the Rulers of the States—out of their political wisdom or in unison with the spirit of the times. It is not as the result of a victory or a defeat that the devolution of

power is to be made. And according to Hindu and Muslim political philosophy the Prince cannot be reduced to a nullity. He cannot be the mere executive instrument of the will of the people. He cannot be a king that merely reigns but does not govern. If 'Responsible Government' is to be embodied as the objective of the constitutional reform of Indian States—already one or two of them are playing with the idea—they must be prepared to see the Ruler reduced in a few years to the position of a figurehead—princely prerogative and British paramountcy notwithstanding—and to see a constitutional struggle kept on till that goal is reached

If it is not to be responsible government, what can be the proper and worthy objective of constitutional reform in Indian States? It has to be—as already indicated in a previous article by the present writer[1]—government by partnership. Partnership between Prince and People in the whole business of the government of the State ought to be the principle and objective of the constitution of an Indian State. Normally the Prince and the People would be equal partners in the business of government. But to provide for an escape from deadlocks, the powers which history and usage have given the Prince of predominant partner will be brought into play. Government by partnership between Prince and People is the system of government suggested by the history and politics of Indian States. It has the essentials of popular and representative government, although it does not display the pronounced dictatorial features of responsible government, which is certainly not the only form of popular, representative government.

How, then, would the preamble to a constitution for an Indian State framed on the principle of a partnership run? Some such form of words as this might serve:

Whereas it is right and proper that I . . . should take the people of my State into partnership with me in the business of the government of the State, and the social, economic, and political progress of the State calls for such a partnership;

And whereas this partnership is intended to give the people scope and effective and fruitful activity, and plentiful though not predominant influence in the management of the affairs of the State;

And whereas this partnership is not inconsistent with the rights and obligations of my relationship with the Federation of India whenever it is brought into being and with the historic rights of rulership handed down to me from my ancestors;

And whereas the time has come for the inauguration of such a partnership;

Be it enacted . . . .

IS PARTY NECESSARY ?

One of the political institutions introduced by the British into India is Party. Ever since the Report on Constitutional Reforms by Mr. Montagu and Lord Chelmsford was published, Indians have been adjured to set up the party system if India was to have real parliamentary and responsible Government. The Simon Commission deplored the absence of real political parties during the regime of the Montagu-Chelmsford Reforms. During that period provincial governors urged the people of the provinces to set up real political parties and work the party system if they were to derive full benefit from the system of government introduced by those reforms. On the eve of the introduction of the present constitution by the Government of India Act of 1935, the Joint Parliamentary Committee hoped that 'in the future parties may develop in the provincial legislatures which will cut across communal lines' so that the practice of collective responsibility of Ministers may be an important part of the parliamentary life that was contemplated. It must be acknowledged that these hopes and expectations have not been realized. Political parties as they exist and operate in the home of the party system simply do not exist in India.

Before, however, we can accept this statement, we must know what parties are. Parties like most English political institutions are the product of history and historical circumstances. English political parties have for their ancestors the Cavaliers and Roundheads that Charles I's struggle with Parliament produced, the former taking the side of the King and the latter the side of the Parliament. Their immediate descendants were the Whigs and the Tories who took opposite sides to each other in the next struggle between King and Parliament and that turned round the 'glorious revolution' of 1688, the Whigs for the Revolution, the Tories against it. That was at first the dividing line between them. They did not start as pro-monarchical and anti-monarchical parties till a monarchy arose that had no connection with the Revolution. It was under the alien Hanoverians that the

Whigs came to be opposed to the power and prerogatives of the Monarchy and the Tories to be its supporters. By the time of George III, i.e., by about 1780, the play of these two parties on the political and parliamentary proceedings had become an important part of English public life. The fact of party nearly a century old gave rise to the theory of party. And the theorician of the party system fortunately for its prospects was Edmund Burke. He it was that gave to English letters a philosophical justification of the party system that he found flourishing and in which he was caught up when he resolved on a political career. Party, Burke defined as a body of men united for promoting by their joint endeavour the national interest upon some particular principle on which they are all agreed. The apologia for party he urged thus, 'When bad men combine the good must associate, otherwise they will fall one by one an unpitied sacrifice in a contemptible struggle'. He urged that no men could act in concert who did not act with confidence, could act in concert who did not act with confidence, and that no men could act with confidence, who were not bound together by common opinions, common affections and common interests. But does that mean that when a man joins a party he surrenders his political soul to the party? No, says Burke, men thinking freely will in particular instances think differently. But still as the greater part of the matters which arise in the course of public business are related to or dependent on some great leading general principles in government, a man must be peculiarly unfortunate in the choice of his political company if he does not agree with them at least nine times out of ten. If he does not concur in these general principles upon which the party is founded and which necessarily draw on a concurrence in their application, he ought from the beginning to have chosen some other more conformable to his opinions.

With this theory of party in our hands—and it is a theory that grew out of fact and has been endorsed by subsequent experience—let us review the state of parties and the party system in India. Are there real political parties

in India? Take the Congress. It started as a general political organization whose original objects were the union of the people of India into a nation and the promotion of political progress towards the goal of self-government. It has continued to be this general political organization ever since, changing its goal between Dominion Status and Independence. But since the introduction of the beginnings of popular self-government with the Montagu-Chelmsford Reforms, it has acted also as a political party in the Central as well as in the Provincial legislatures. And since the Government of India Act of 1935, it has even formed governments in a number of provinces as a political party. And as a political party it does fulfil one of the conditions laid down by Burke—the profession of a common political end and of certain common political principles. You may not approve that end or dislike those political principles but you must grant that every member of the Congress party professes the same end and the same political principles. Loyalty of every individual member of Congress to its creed and its ways is pressed far—is almost totalitarian. That freedom to think differently in particular instances which Burke allowed is not tolerated in Congress.

But the other important note of a political party it does not possess. The Party system presupposes that all parties recognise the validity of the State and the system of government, the constitution, as it is. It is within the framework of that State and that government and that constitution that the parties work and achieve their ends. Not that they are precluded from trying to change that system of government. But it must be through and by means provided for by the constitution. The party of Burke's teaching works through the legislature—it is in the context of legislative action that he speaks of party. They cannot use extra-constitutional methods. They cannot resort to revolution. But Congress does not possess this note of a true political party. It does not confine its action to constitutional ends or methods and to the framing of policy and realizing it within the provisions of the constitution. It aims at changing the whole system

of government by way of revolution. No one calls into question its right to do so for the political progress of the country, although one may question its justification in the circumstances of the country and of the people. But it cannot resort to revolutionary methods as a political party. It may do so as a political organization. But that is the trouble with Congress. It aims at being a political organization and a political party at the same time. That it falls between the two stools is a necessary incident of the double role it is attempting to play. Its activity as a party does no good to it as a political organization and its activity as a revolutionary political organization detracts from its usefulness as a political party. Of course its action in 1935 in deciding to work the constitution has been applauded by constitutionalists in India and in England as meaning a conversion to constitutional methods. But the applause was premature if it was not justified when it was discovered that Congress had come in to 'wreck tha constitution and was prepared to go out on any provocation. The swinging and swaying of Congress from the legislatures to the streets is probably due to the fear that the respectable role of a political party is doing damage to its real and permanent role of a revolutionary organization. Anyhow the fortunes of Congress are its own concern, except that it is the concern of every patriotic Indian that an organization which bears the title of Indian and National should not waste its energies and reputation in trying to play the impossible double role of a political party and a revolutionary organization. It does not serve the ends either of constitutional government or of revolution. But our immediate concern is to show that the Congress is not a genuine political party.

Nor, for a totally different reason is the Muslim League a true political party. It is no doubt representative of the Muslim community. But it is representative of them as a religious community. It is the organization of a religious community. But the fact that none but Muslims can join it precludes it from being a political party. It does not come within the range of Burke's definition of party as a body of

men united for promoting by their joint endeavour the national interest upon some particular principle. It is politics, not religion that makes a political party. It may be contended that the Muslims are a nation and the Muslim League is trying to promote their national interest. If they are a nation, the Muslim League cannot attempt to promote the national interest of India which is composed of other people than themselves. For the same reason the Hindu Mahasabha cannot be called a political party. It also is a religious, communal organization. The Justice Party of Madras if it still keeps its doors open to Brahmins as to members of all other communities and the Radical Democratic Party if it has no mental reservations about revolution, and the Liberal Party (although it is only a gentlemen's party with no appeal to the masses) are the nearest to a political party, for they do profess common political principles to be attained within the framework of the present constitution. Tragic-comic products of India's attempt to put out political parties in the present stage of its political development are the Coalition Party and the Independent Party. Other countries have formed coalition governments out of the coalition of parties. Other countries have produced Independents belonging to no party. But India is the only place outside comic opera that has produced Coalition parties and an Independent party. The fact of the matter is that as the Indian Franchise Committee pointed out, the prevalence of communal feeling and the transitory nature of politics which make most parties concern themselves with the question of the end of the political movement rather than with the framing of policy account for the peculiar character of the party system in India.

Party therefore seems to be a plant that has not taken root in India. Much less has the party system. For the party system connotes the existence of two parties in the main who can alternatively form the government of the day. The Congress party if it can be called a party is the only party that offers itself effectively to the country. The Muslim League is not an alternative but a supplement to it, repre-

sentative of the Muslims. The Hindu Mahasabha, the Justice Party, the Liberal Party have had no chance against the Congress at recent elections. What has happened elsewhere is happening in India also. In Egypt before independence, there could be only one party, the party of the Nationalists whose creed was Independence. No other party could compete with it with a more attractive slogan. In Egypt, men rather than measures have been the guiding principle for the politically minded, according to the testimony of Amin Yousuff Bey, the author of *Independent Egypt* (1939). In India, Congress knows how to use the slogan of Independence and the name of Mahatma Gandhi with an electorate that is largely illiterate and is susceptible to the appeals of the Ascetic and the Mystic even in political strategy and tactics.

Is it wise to build the constitutional structure of India on such an unreality as Party? Community is more real than party in India. The fact that almost all political organizations are communal in character proves this. The fact that elections even under Congress auspices are won or lost on communal lines proves this. It would be wise therefore to recognize Community as a political reality and build our legislatures, our executive governments on that basis. We can give up party with less regret as many peoples in Europe have found it unnecessary. The Swiss Executive which is the model for executive government of India, at the Centre as well as in the provinces, does not know party in its composition. According to M. Hodza speaking from Czechoslovakian experience, complaints about parties growing into two influential factions even at the expense of the State's prerogatives appear justified. The experience of more than one European State is that parties have to support the policies or requirements of their powerful financial supporters or contributors to party funds. In Canada a recent native critic attributes the bribery of a low class of voters on election days, the rake off on contracts obtained by Govrenment supporters, the grants to favoured constitpencies, and other examples of the spoils system to the party-system which he sadly admits

'we can hardly expect to suppress'. In the U. S. A. Abraham Lincoln had to confess that 'the party lash and the power of ridicule will overawe justice and liberty, for it is a singular fact, but none the less a fact and well-known by the most common experience, that men will do things under the terror of the party lash that they would not on any account or for any consideration do otherwise'. The numerous parties that have distracted the politics of France and other continental countries of Europe and of South America show what an Anglo Saxon growth the party system is. The recent experience of the totalitarian regimes of Germany. Italy and Russia where only one party was or is tolerated is a sign-post of danger which again Congress has tried its best to bring home to India. Ideological dogmatism and intolerance and fanaticism-and these also, recent experience has shown, are not incapable of export and acclimatization in India—would make of the party system not merely an irrelevance but a terror. The idea and practice of compromise, of benevolence to other parties, of co-operation with other parties must become the ordinary behaviour of political parties. When the action of the Progressive party in the London Country Council, years ago, after a resounding victory at the polls offering some of its seats to the Conservative Party is repeated or at least the spirit behind it is cultivated in India, we shall begin to look more kindly on the party system. George Holyoake the great Radical when the progressive party was criticised by a Radical paper for this action wrote, 'Are you of the opinion that a Party in an assembly should whenever possible suppress the opposition? It that not sheer political tyranny? You seem to think that a majority is infallible. Magnaanimity is the best politics. No party is so wise that the existence of a responsible opposition is not an advantage for itself in deliberation as well as in administration."

India has a long way to travel before the habits of compromise and of restraint and of mutual respect and forbearance that make the party system as it works in

England a beneficent factor in political organization, become part and parcel of the political life of the country. Unfortunately for the country it adopted the latter day characteristics of the party system that came to the forefront in the twenties and thirties of this century. M. Michels in *Political Parties* has shown how the party system, especially as it has developed on the Continent under universal suffrage, has produced political parties that have become the instruments of ideological fanaticism, of oligarchic rule, of despotic dictatorship, the old party loyalty of freemen having degenerated into the servile obedience of robots. All these vices of the degenerate party system have been reproduced in the political organizations of modern India. No patriotic Indian can view with equanimity the building of the political life of the country on such a rotten foundation—especially as it is so much an exotic. It may be that real political parties, as Burke envisaged them, may grow in the country. And there is no attempt here to deny altogether the value of party. The party system may be necessary to focus political discussion on a few urgent topics, to organize public opinion in favour of useful legislation, to rouse and keep alive public interest in political questions. But what is urged here is that it is not necessary, much less useful, to use it to organize the working of the Legislature or to determine the formation or functioning of the Executive. It is not necessary for the organization of government in India.

THE SWISS EXECUTIVE—A MODEL FOR INDIA

A French student of the chief systems of executive government (Dupriez—Les Ministres—1892) has observed, "It is above all in the relations between the legislature and executive organs that the Constitution (the Swiss Constitution) has worked out a complete confusion of powers". But he went on to add immediately in a footnote that this statement was only the theory of the constitution, that in practice this complete dependence of the federal Executive on the Legislature imposed by the constitution is in fact diminished and corrected by the moral influence that the members of the Executive could exercise on the legislative assemblies. In these two statements of the French commentator on the Swiss constitution we have a true account of the position and power of the Federal Executive in Switzerland.

The Federal Executive called the Federal Council in Switzerland comes into existence by election by the two chambers of the federal Legislature in a joint session. They are seven in number and elected for three years. Anyone eligible for the Federal Legislatures and he need not be a member of the Legislature is eligible for the Federal Council, but not more than one from a canton. By convention members are chosen from each of the linguistic and political sections of the Assembly and of the country. At the beginning it was not always so. The Catholic Right had been excluded from the Federal Council till the beginning of the 20th century in spite of its commanding a large number in the Legislature. This anti-Catholic prejudice has in recent years been compensated for by the election of M. Motta continuously for a period of 30 years and 5 times as President. In 1883 there were 3 members of one particular party, the Liberal party, though it was a small group in the legislature, the radical majority looked for its chance to retirement or the death of a member. But the party and religious prejudices that prevailed once are things of the past. The greater Cantons, Berne, Zurich, Vaud

always have one member, the German cantons have more than one.

The Swiss Federal Executive is created by law and organised by the law of the constitution unlike the British Cabinet, whose position and power are not defined in any constitutional law. It is not the nominee of a King, a President or Prime Minister. The Swiss Executive is a law-made and law-based executive.

This Executive sets about its work also in a manner of its own. It is not a homogeneous body like the British Cabinet. Different political ideas and parties are represented in it as in a legislature. Ministers sometimes oppose each other in public. But it works as a collegial Executive. Not the principle of collective responsibility but the principle of collegial activity is the motto of the work of the Swiss Executive. As M. Motta, long a member of the Federal Council and often its President said in a speech in the National Assembly on 24th June 1927, "the principle of collegiality of deliberation in important affairs and especially in regard to foreign affairs is fundamental in our public law and is strictly observed". There is no hierarchy among the members—even the President is only *primus inter pares*—he lasts only a year although eligible for re-election and some Presidents as a matter of fact have held office continuously for years.

The Swiss Federal Ministry performs two functions generally seperated. It performs the governmental function of determining policy and the administrative function of executing policy which under other systems is the business of permanent departmental heads. "Politics and administration" says M. Motta, "form an inseperable whole". It meets twice a week or more frequently according to circumstances. Four are required to make a quorum, the attendance of members is compulsory, decisions are by absolute majority. All decisions small or great are in theory taken in council but in practice only important questions come up before and are

decided in Council. The Ministers are subject to civil and criminal responsibility for their individual acts.

The actual working of the Federal Council is thus described by M. Motta who speaks from actual experience of nearly 25 years as member of the Federal Council. "The work of the Bundesrat is a hard school. Here come seven men together who are to advise each other and work with each other for many years. Their temperaments, their origin, their speech are different, even in their outlook (weltanschaung) on the world they may look away from each other. About their politics and administrative policy play all kinds of influences. On their manner of government depends the welfare of the country. The common bond between them is extreme love of country and a strong will to agree. Of these Hoffman (one of M. Motta's colleagues) was a master. He had renounced completely his party allegiance. He wished religious, political and social peace for the people".

Turning to the relations between the Executive and the Legislature we find that by the law of the Constitution the Executive is the subordinate and servant of the Legislature. It is an executant of the decisions of the legislature. There can be no question of difference between the Executive and the Legislature, as by law it is bound to carry out the decisions of the Legislature. Therefore there can be no question of losing the confidence of the Legislature. Votes of no confidence are irrelevant—they simply do not arise. The Swiss Federal Council works as an Executive Committee of the Legislature. The members of the Federal Council are councillors, colleagues, auxiliaries, delegates, servants of the Legislature rather than masters or leaders as in England. The influence of the Legislature on the Executive is more direct and detailed than in countries under the parliamentary Cabinet systems. Legislative initiative lies with the legislature as much as with the executive. It must be remembered that the members of the Federal Council cannot be members of the Legislature although they are present at sessions of the Legislature and take part in them. A convention has

also been established that Ministers should not speak outside the Legislatures except on official and ceremonial occasions.

That is how the Swiss Executive is constituted and works. It has many advantages which make it worthy of imitation. If popular representative government is to be a reality the Swiss system makes it possible. The Legislature electing the supreme Executive makes representative government a reality. The functions of administration and legislation are under the Swiss system differentiated whereas under the British system of responsible government both the functions are performed by the Cabinet which finds the combination too much for it. Legislation by private members become possible whereas under the "responsible" system it has become well-nigh impossible. The legislation that the Swiss Legislature produces is not based on party ideology but on the real and urgent needs of the country. The evils of party government are considerably reduced. The bitterness of party feeling and relations is eliminated as there are no spoils of the party war. The insincerity of party leaders, their dishonesty at elections promising more than they know they can perform is not necessary. Not that party organization would disappear, parties would remain, there would still be the party advocating things as they are and the party advocating things as they ought to be and their relations and influence on each other would still affect the course of legislation and administration. But as party would not determine the composition of the government, the bitterness of party warfare would disappear.

When with these advantages in mind one advocates the adoption of the Swiss model for India one is confronted by all kinds of objections and from divergent quarters like the Liberals and the Congress. The most reasoned objection to the introduction of the Swiss system of Executive into India is to be found in the Report of the Sapru Committee. The strongest argument put forward by the Sapru Committee or rather by a majority in it as the Chairman and some members like the present writer were in favour of the Swiss model,

is that "since the time representative government was introduced in India many decades ago, the Indian mind has been accustomed to the British type and indeed the whole of its education has familiarized it with that system more than any other system". This statement is not supported by the facts of political history. Political opinion as reflected in the proceedings and resolutions of the Indian National Congress from 1885 till 1920 always visualised Executive Councils as constituted in the days of the Company and of the Crown, appointed by the Crown, each lasting for 5 years and irremovable by any vote of the legislature. All that the Congress had been asking for was the gradual and complete Indianization of these Executive Councils. Gokhale in his Political Testament dated 1915 after asking for an Executive Council in the provinces half Indian and half English wanted the relations between the Executive Government and the Legislative Council so constituted to be roughly similar to those between the Imperial Government and the Reichstag in Germany. He insisted that the members of the Executive Government should not depend individually or collectively on the support of a majority of the Councils for holding their offices. The same kind of Executive Council and relationship between Executive and Legislature he called for in the Government of India. Also the historic Memorandum on post-war Reforms signed by 19 elected members of the Indian Legislative Council dated October 1916 required that "the elected representatives of the people should have a voice in the selection of the Indian members of the Executive Council and for that purpose a principle of election should be adopted". The Governor-General-in-Council, or the Governor in Council should have the right of veto subject to certain conditions and limitations. But this Memorandum also presupposes an irremovable executive for the period of 5 years. Similarly the scheme of reforms passed at the 31st session of the Indian National Congress held at Lucknow on 29th December 1916 and adopted by the All India Moslem League at its meeting of 31st December 1916 also asked for Executive Councils of the provinces and of the Government of India

half English and half Indian—the Indian half being elected by the members of their respective Legislative Councils. It is only with the coming of in 1919-1920 a perfervid English politician on the stage of Indian politics that the trend of Indian political agitation has changed in the direction of a demand for the introduction of responsible government on the British model and based on the party system. Used to the system of responsible government as it prevailed in England and familiar like most Englishmen, although as a Jew he should have been more cosmopolitan, in his political knowledge, he placed before political India the objective of responsible government based on the party system. We have the recently published evidence of Sir Chimanlal Setalvad who in his *Reflections and Reminiscences* says that it was the insistence of Mr. Edwin Montagu, the first friend of India of Cabinet rank that converted political India to Responsible government. And political India took the gift with both hands. For it looked so precious. Responsibility of the Executive to the Legislature, reflecting the strength of the party majority in the popular legislature—popular government could no farther go. And the Congress which by 1919 had evolved from a National Movement in which various strands of political thought had converged into a Party Organization professing an exclusive political ideology and insisting on party exclusiveness and the profession of a rigid party creed religiously enforced found it suited to its new political philosophy and method. It fell in with this party orientation of the Congress to accept the principle of the idea and practice of the English system of responsible government. Responsible Government on the English model may be the latest fashion, the last word in constitutional government. But to say that it is in accordance with Indian tradition as the majority of the Sapru Committee contend is to say the thing that is not.

Nor is it correct to say that the Swiss Executive is not a form of responsible government. If responsible government consists in the responsibility of the Executive to the

Legislature, the Swiss Federal Executive is a form of responsible government. In fact it is much more 'responsible' than the British Cabinet—because the Swiss Federal Council has to carry out the decisions of the Legislature however unpalatable they may be. No doubt, the members of the Council argue, try to persuade, bring out all the objections to the wishes of the Legislature—but once the mind of the Legislature is made known by a majority vote the Executive loyally carries it out. Whereas, under the British system the Prime Minister and his Cabinet by a threat of dissolution can bring recalcitrant or rebellious members to heel. The Swiss Council is much more dependent on the legislature than the British Cabinet. It cannot by a threat of resignation smother and stifle all serious opposition. For resignation or dissolution means the loss of a salary of £600 (now £1,000), the expense of an election (average £1,000) and the probability of hostility from the party organizations and leaders at the next elections. The responsible government of Switzerland avoids that constant nagging of the Legislature at the Executive shown in frequent threats of "no confidence" motions which conduce neither to the efficiency of the Executive nor the dignity of national representation. By the presence of Ministers to speak and explain but not to vote in the Legislature all the advantages of the presence of Ministers in the Legislature obtained in England and unobtainable in the U. S. A. are secured in Switzerland. Collective will and responsibility of the Swiss Executive obtain only in the negative sense that there is no individual responsibility of the ministers. It is as a collegial ministry that it operates. And according to all accounts, it operates in harmony within itself and with the Legislature, "If all Swiss", says M. Motta, "could see with what care for mutual comprehension, German, French and Italian Ministers in spite of differences or origin and education make an effort to collaborate with each other, they would learn great lessons in national union"

It is because I hope and believe that Indian Executives composed, on the Swiss model, of representatives of different communities and different parties will learn and teach lessons in harmonious co-operation for the good of India that I have pleaded and plead once again for its adoption in the new constitution of India. The formation of political organizations on communal lines, the absence of real political parties, the prevalence of communal and religious feeling in the field of politics, the tradition of Indian opinion and practice before it was overwhelmed by English ideas and the ideology of the one-party State and the security of political development require the adoption of this kind of Executive for India. To say as does the majority opinion of the Sapru Committee that the unfortunate promulgation of communal ideas in certain quarters is a temporary set back is to fly in the face of facts. Political wisdom lies in recognizing facts as they are and framing instruments of government that will achieve the ends of government in the atmosphere of these facts.

THE ARK OF THE FEDERAL COVENANT

"It is public justice", said Burke. "that holds the community together". The Judiciary in a federal constitution is especially called upon to hold the community together. A federal constitution is necessarily a written constitution because a federal constitution is the result of a *foedus* or compact between parties or communities. And that written constitution is the supreme law of the land. As Chief Justice Marshall said in his judgment in *Marbury vs. Madison* "all those who have framed written constitution contemplate them as forming the fundamental and paramount law of the nation". "In a federal state" Marshall goes on to say "it is emphatically the province and duty of the judicial department to say what the law is". For beside the law of the constitution, there are the laws made by the legislature of the Federal Government, there are the laws of the several legislatures of the several units of the Federation. The laws made by the legislatures must conform to the Law of the Constitution of the Federation. Otherwise the Federation would be broken, for its foundation, the law of the constitution which brought it into being, would be broken.

If there is to be a federal judiciary, there must be a Supreme Court of that federal judiciary. Otherwise as Hamilton pointed out in one of the papers of the *Federalist* if there is in each State a court of final jurisdiction there may be as many different final determinations on the same point at there are courts. Beside all contradictions to be expected from differences of opinion, there will be much to fear from the bias of local views and prejudices and from the interference of local regulations.

It is not merely infractions of the Constitution that the Supreme Federal Court will be called upon to judge but, according to Hamilton "the injury of the private rights of particular classes citizens by unjust and partial laws, not only

the rights of the Constitution but the rights of private individuls''. The nature of a Federation and its objects and constitution determines that the jurisdiction of the Federal judiciary ought to be extended to these several kinds of cases

1. to all those which arise out of the laws of the Federation;
2. to all those which concern the execution of the provisions of the Federal Constitution;
3. to all those in which the Federation is a party;
4. to all those which involve the peace of the Federation whether they relate to the intercourse between the Federation and foreign States (treaties, national defence, cases of admiralty, maritime jurisdiction) or to that between the States themselves;
5. to all those beyond the impartial judgement of State Courts, e.g., in controversies between different States and their citizens on the principle that no man or institution ought to be a judge in his or its cause.

The next question that arises concerns the organization of the Federal Judiciary is Ought there to be one single Federal Court with original and appellate jurisdiction or ought there to be local federal courts in addition placed at convenient intervals in the country. The U. S. A. constitution has decided in favour of one Supreme Federal Court and local federal courts stationed in each State. The power of constituting inferior courts given to the Federal Government by the U. S. A. constitution was intended to obviate the necessity of resource to a distant central Supreme Court in every case in which the federal judiciary would have cognizance. As regards appointment, tenure of office, salaries, the well-known principles which ensure the competence independence and impartiality of the judges are to be found in the constitution of the U. S. A.

The principles which govern the determination of the jurisdiction of the Federal judiciary may well be applied in the Indian Federation that is to be. As provided for in the Government of India Act of 1935 (Sections 204 and 205) it may be presumed that the Federal Court will be endowed with original as well as appellate jurisdiction. The original jurisdiction can be exercised when there is a dispute between any two or more of the following parties, i.e., the Federation, any of the provinces, any of the Federated States, if and so far as the dispute involves any question (whether of law or fact) in which the existence of a legal right depends. The appellate jurisdiction of the Federal Court according to the Government of India Act 'extends to any judgement, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law or the interpretation of the Act (the Government of India Act of 1935) or any Order in Council made thereunder' and it was to be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly. But when the next Federal Constitution is framed, the jurisdiction of the Federal Court will have to be widely extended. It must exercise jurisdiction over all the kinds of cases provided for in the constitution of the U. S. A.

The more controversial question is whether the Federal Judiciary should have local courts as in the U. S. A. or whether the present ordinary courts, district and High Courts should be used to take cognizance in the first instance of cases falling within the jurisdiction of the federal judiciary. The decision on this question is a matter of convenience and expediency rather than of principle. If the present High and District Courts of India can bear the strain of this new set of cases, it is only reasonable that they should be made use of, as they have already on the whole and by far and large a record of impartiality and independence. But other accounts go to prove that their ordinary jurisdiction is already

heavy. The Rankin Committee on Civil Justice testified 20 years ago to long delays all over India and recently the Sapru Committee has deplored the long and protracted trials in subordinate courts leading up "to appeals or sessions in the High Courts or possibly in some instances, from decisions given by the Presidency High Courts which exercise original jurisdiction, the litigants having to wait for a number of years before they can see the end of the litigation and the costs being necessarily much heavier". The Sapru Committee recommended that cases of a certain description involving important questions of a constitutional character are taken directly to the Federal Court. But even so, Delhi is far away Federal justice should be brought near to the people in the provinces and the States that are to be members of the Federation. There are weightier reasons why the Federal Judiciary should have its own local representatives scattered all over the country. There is the danger which operated in America and which may operate in India of "the prevalency of a local spirit which may disqualify the local tribunals from the jurisdiction of national causes". And the other danger pointed out by Hamilton for the U. S. A. may operate in some backward provinces or States whose local courts would be improper channels of the judicial authority of the Federation. If these ordinary local courts were to have jurisdiction over "federal causes", the door of appeal would have to be made very wide and an unrestrained recourse of appeals allowed, as Indian experience shows, makes justice delayed and therefore denied. If not every district, at least every province or State or group of States that forms the Indian Federation should have a federal court for cases of first instance.

One further question will arise once we have a central Supreme Federal Court and inferior federal courts in the provinces and States. The question has been answered for us in the constitution of the U. S. A. and in the discussions that preceded and accompanied its framing. The central Supreme Federal Court will take cognizance of causes in

which foreign States or their official representatives are a party. It is only expedient and proper that such questions involving or concerning public peace and relations with other sovereign States should be submitted in the first instance to the highest federal judiciary. In all other cases of federal cognizance the original jurisdiction would belong to the inferior federal courts and the Supreme Court would have nothing more than an appellate jurisdiction. Another question is—should this appellate jurisdiction apply to matters of fact as well as to matters of law? By the Government of India Act of 1935 (Section 205) the appellate jurisdiction of the Federal Court applies only to questions involving a substantial question of law as to the interpretation of the Act or any Order in Councilmade thereunder, and that only on the certificate of a High Court to this effect. All these limitations on the jurisdiction of the Federal Court would have to go if the Court is to act as a real Federal Court. It would have to be brought to the position of the Supreme Court of the U.S.A.

A question discussed at the time of the foundation of the constitution of the U.S.A. in regard to the federal judiciary was the relation of the State Courts in regard to those issues which are to be submitted to federal jurisdiction. The principle was laid down by Hamilton that the State courts should retain the jurisdiction they already had, their concurrent jurisdiction if it subsists, should be allowed. Applying this principle to Indian circumstances and considering the record of the courts, district and High Courts, concurrent jurisdiction ought to be allowed. But this concurrent jurisdiction must be strictly applicaable only to those description of causes of which the existing courts have had cognizance. While appeal from these courts to the Supreme Court in regard to all matters in which the courts have concurrent jurisdiction should be allowed, the question and doubt would be expressed whether an appeal should lie from the provincial and State courts to the subordinate federal courts in the provinces. In view of the fact that these subordinate courts are local parts

of the Federal Judiciary it is difficult to allow that appeals from the present provincial courts cannot lie to the inferior courts of the federal judiciary. To preserve the prestige of the former, appeals would lie to inferior federal courts of equal status, appeals from the provincial High Courts would lie to the provincial or regional federal court and not to the district federal court.

A final question that has to be discussed is whether the central Federal Court should also become a Supreme Court of Appeal for civil and criminal cases from the High Courts of the provinces. Recently this discussion has become popular as the feeling also has become popular that there must be in India a final court of Appeal for all causes. We doubt the wisdom of saddling a Federal Court of Appeal with appellate jurisdiction in regard to ordinary civil and criminal causes. The Federal Court is a court with a specific kind of jurisdiction over a special, set of causes that arise out of federation. And their efficiency in the performance of this special kind of work would be impaired if they were called upon to turn their hands, however competent, to other kinds of work. This move to endow the central Federal Court with the jurisdiction of a final court of Appeal is partly due to a desire to oust the juridiction of the British Privy Council. The way to oust the jurisdiction of the Privy Council is to oust it, is to abolish the right of appeal to it from the High Courts of India. And if there must be a central Court of Appeal for India, let a separate Supreme Court of Appeal be established. The argument of economy that the combination of a Federal Court with a Supreme Court, as a Federal Court would not have much work to do, would save money will not last long. Once a complete Federation is established in which the States also would be included, there would be enough work and to spare for the Federal Courts. A federal constitution is a litigious constitution and with a litigious people like ourselves the work of the federal courts would be cut out for them. And must there be a Supreme Court of Appeal for civil and

criminal causes? The U. S. A. have got on without one. The supremacy of the State courts in regard to non-constitutional causes is one of the attributes of State autonomy. And the supremacy of the High Courts of the provinces and of the States may well be considered as an attribute of the autonomy of provinces and States in India. The Indian States could certainly claim the preservation of this attribute for their High Courts. What is good enough for Indian States ought to be good enough for the provinces.

I have called the Federal Judiciary the Ark of the Federal Covenant. Is is the depositary and guardian of the federal constitution. It is also the Arch of the Federation. It is the institution that keeps the federal structure together and intact. A federation is by its very definition a government rather of laws than of men. And what keeps it so, to the continuous advantage of liberty and self-government, is the federal judiciary.

THE CONSTITUTION-MAKING ASSEMBLY

Both the Cripps' proposals of 1942 and the recent Cabinet Delegation proposals concede the right of making the new constitution of India apart from a few fundamental principles which had to be imposed by the Cabinet Delegation on account of disagreement on them among the chief political organizations—to representative citizens of India. For sheer convenience the Cabinet Delegation following the Cripps' proposals has suggested. that the representatives should consist of those elected by the recently elected Legislative Assemblies of the several provinces and those selected by the Rulers of the Indian States according to methods of their choice. This method of constituting the assembly that is to frame the new constitution for India determines its nature and power. It is just a constitution-making body, the term used in the Cabinet Delegation's proposals. It is not a Constituent Assembly. And it is not a Constituent Assembly for the following reasons. The electoral colleges which elected the members of this body, the provincial legislative assemblies, were not elected for this purpose, either by itself or in common with other purposes. Those assemblies were chosen on other election cries, relevant or irrelevant, but nowhere were they elected in order to elect members of the constitution-making body. A constituent assembly is generally elected on a wide suffrage. Then it would have the sanction of national support behind it. Now it has only the sanction of the power that called it into being, i.e., the British Government and its representative in India. Then it would have been a sovereign body, having the right of determining the constitution of the country without any further reference to any other body. But as it is the body that has been called to meet in the library Hall of the Indian Legislature at New Delhi is just a constitution-making body, charged with the duty of framing a constitution for India. The result of their deliberations and decisions would have to be ratified by

legislatures or conventions, elected for this purpose. What power words that we use has over our ideas is illustrated by the mistakes made by political leaders who having called this body a Constituent Assembly, have been tempted to deem it a sovereign body.

Now is there anything derogatory to the position and function of the constitution-making body. The famour Philadelphia Convention which brought the constitution of the U. S. A. into being was a similar body. It came into existence in ever a more haphazard way than our constitution-making body. According to a recently published account "in March 1785 the States of Virginia and Maryland sent delegates to a meeting at Alexandria to discuss questions connected with the navigation on the River Potoma, between the two States. At Washington's suggestion the delegates adjourned to his home at Mount Vernon and there agreed to the Mount Vernon Compact, a commercial agreement providing for the abolition of customs barriers between the two States and a common scale of import duties. Soon after, Maryland invited delegates from Delaware, Pennsylvania, and Virginia to meet and consider an extension of the compact. Virginia accepted, but only on condition that all the thirteen States should be invited to discuss whether a uniform system of trade regulations could be drawn up for the United States. The meeting took place at Annapolis in September 1786, but only five States were represented. The delegates of these States passed a resolution recommending the holding of a Convention, 'to devise such further provision as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union'. On 21st February 1787 the Congress of the Confederation invited the States to send delegates to a convention at Philadelphia, 'for the sole purpose of revising the Articles of Confederation in such a way as to render them adequate to the exigencies of Government and the preservation of the Union'. Thus already existing legislatures nominated representatives to the Philadelphia Convention". It did not

look upon itself as a constituent assembly or as a sovereign body. With this humble but realistic view of itself it did not look upon constitution making as final and finished till the constitution they framed was ratified by 9 States in special conventions. To follow in the footsteps of the Philadelphia Convention is no mean position for the Indian Constitution-making body.

From the Philadelphia Convention also may be learnt lessons in organization and procedure that may, if applied to the work of the Indian Assembly, ensure expedition and success. The history of political assemblies show that good organization rather than great power is necessary for their successful operation. Great power may be defeated by defective organization. A comparison of the fortunes of the French National Assembly and the Philadelphia Convention show how much the effectiveness if a deliberative assembly depends on its organization and procedure. Contemporary observers have placed on record the useless methods of the French Assembly, where as soon as a subject was introduced, lists of speakers pro and con the question were made and each came to the tribune and delivered an academic dissertation on the subject without any reference to what went before. Convinced of its infallibility and self-sufficiency, the French Assembly also voted its constitutional laws once and for ever, *uno ictu* separately and independently of each other, without comparing them with each other as it went along without coming back to previous decisions and reconsidering them on second thoughts. The majority would not listen to reason on these matters of procedure. When Mirbeau dared to quote the example of the British Parliament, he was told to shut up as a free and independent France was not going to take lessons in parliamentary procedure from a foreign country. The success which crowned the deliberations of the Philadelphia Convention ought to persuade the Indian Constitution-making body to follow in its footsteps.

The first business of the Constitution-making Assembly will be to elect its President. As he is the presiding officer

of the Assembly he should be elected by the Assembly as a whole. All the members of the Assembly, the representatives of British India as well as the representatives of the Indian States should be there at the first meeting. The interpretation put upon the Cabinet Delegation's proposals that would bring the representatives of the Indian States only after their Negotiating Committee had secured the terms on which they would come into the Constituent Assembly is clearly wrong. Once the Indian States decide to take part in the Constitutional Assembly they have a right to come into it and take part in its work. They must be present at the time of the election of the President—if the President is to be the choice of the Assembly as a whole and if he is to enjoy the confidence of the Assembly of which he is the chosen presiding officer. They will also have to be present at the preliminary work of the Assembly before it divides into the sections that will devote themselves to the making of the constitution of the groups and of the provinces within the groups. At this preliminary meeting may also be appointed a Committee to prepare Standing Rules and Orders governing the conduct of the meetings of the Assembly. It will have to elect the other officers of the Assembly and the Advisory Committee on the rights of citizens, minorities and tribal and excluded areas and settle the general order of business. After the provincial and group constitution are settled, all the members of the Constitutional Assembly, the representatives of the provinces and the States will reassemble for the purpose of settling the Constitution of India.

The tried devices of organization and procedure are applicable to small as well as large assemblies and may be used for the larger Constitutional Assembly for India as well as for the smaller constitutional assemblies of the sections.

The first question that will have to be decided as soon as the President is elected is whether the Assembly should sit and deliberate as a Committee of the whole house or appoint a Committee of Proposals whose decisions and recommendations should be placed before sessions of the whole Assembly.

The Philadelphia Convention straightaway went into a Committee of the whole house—it was small enough to do it effectively. The device of a Committee of the whole House may be resorted to without much danger to orderly proceedings for the Assemblies of the Sections—the largest being 187 for section A. But the Constitutional Assembly to settle the government of the Union of India would consist of 385 members. And a Committee of the whole House of an Assembly of 385 would be difficult, but it is not impossible. The British House of Commons of over 600 members frequently goes into a Committee of the whole House. And if the same good sense, restraint, and a realization of limitations which keeps many members who could not make any useful contribution to the discussions absent or if present prevents them from rushing in where they should not so much as tread, it could be done. Especially would it work if Jefferson's advice to would be participants in a constitutional debate were borne in mind. Describing one of the deliberative bodies of which he was a member he says:

"Our body was little numerous, but very contentious. Day after day was wasted on the most unimportant questions. A member, one of those afflicted with the morbid rage of debate, of an ardent mind, prompt imagination, and copious flow of words, who heard with impatience any logic which was not his own, sitting near me on some occasion of a trifling but worthy debate, asked me how I could sit in silence, hearing so much false reasoning, which a word should refute? I observed to him, that to refute indeed was easy, but to silence impossible; that in measures brought forward by myself. I in general, was willing to listen; that if every sound argument or objection was used by some one or other of the numerous debators, it was enough; if not, I thought it sufficient to suggest the omission, without going into a repetition of what had been already said by others: that this was a waste and abuse of the time and patience of the House, which could not be justified. And I believe, that if the members of deliberate bodies were to observe this course

generally, they would do in a day, what takes them a week; and it is really more questionable, than may at first be thought, whether Bonaparte's dumb legislature, which said nothing, and did much, may not be preferable to one which talks much, and does nothing. I served with General Washington in the legislature of Virginia, before the revolution, and during it with Dr. Franklin in Congress. I never heard either of the speak ten minutes at a "time, nor to any but the main point, which was to decide the question. They laid their shoulders to the great points, knowing that the little ones would follow of themselves. If the present Congress errs in too much talking how can it be otherwise, in a body to which the people send one hundred and fifty lawyers, whose trade it is to question everything, yield nothing, and talk by the hour? That one hundred and fifty lawyers should do business together, ought not to be expected".

The advantages of discussion in a Committee of the whole House are so great—the constitutional scheme can be discussed clause by clause, a motion need not be seconded, members participating in the discussion can speak more than once on the same clause—that I think it ought to be tried for the larger Constitutional Assembly. If this device is found by experience not to serve its purpose, it may be given up at any time for it lies with the Assembly to go or not to go into a Committee of the whole House at any time during its sessions.

While the Committee of the whole House would be required for discussion on preliminary decisions on particular clauses or sections of the whole scheme, the final decision on the scheme as a whole being reserved for a session of the Constitutional Assembly, a number of Committees that would help the Committee of the Whole House or the Assembly to do its work, would have to be appointed. A General or Discussion Committee may be appointed for receiving communications or proposals from other members of the Assembly, to arrange, digest and prepare a scheme or clauses of a scheme for subsequent discussion and decision by the

Committee of the Whole House and later by the Assembly. It may consist of one member from each province and major state and groups of smaller states. A Committee of Details may also be appointed to deal with matters remitted to it by the Committee of the Whole House for amplification, clarification or putting clauses and sections agreed upon into final shape. Another committee, to be called the Style Committee as it was termed by the Philadelphia Convention or the Drafting Committee, if you please, for putting the decisions into proper constitutional form and legal language would be required. The Committee of Details and the Committee of Style should be composed of experts, even if they are elected. This may be ensured by giving the presiding officer the right to nominate twice the number of members required and to be elected by the Assembly. One precaution to be taken in regard to the constitution of the Committees and Advisory Bodies is as indicated by the unfortunate experience of the Versailles Peace Conference that they should all be constituted beforehand, at the very first session of the Assembly and not one after the other, at later periods in the life of the Assembly as it happened at Versailles. Each Committee should be allowed to elect its own Chairman and Reporter or Draftsman for a committee cannot make up a draft. As there will be no Government Bench in any of the Constitutional Assemblies, the right of initiating proposals would have to be given to the Chairman of the Committee of Proposals and of the other Committees elected by the Assemblies.

With regard to discussion in Committees or Committees of the Whole House or in Sessions of the Assembly the practice of the House of Commons and other deliberative Assemblies built on that model should be followed that no subject should be brought forward and discussed except in the form of a resolution moved by a member. The absurd method, born out of invincible ignorance and inevitable inexperience adopted by the French National Assembly of allowing speakers to speak at large on a subject and then gathering a resolution from the trend of the speeches made

and putting it to the vote of the House would be disastrous. Not only would time and temper be lost, but the proceedings of Committee or Assembly would be inordinately delayed and the efficiency of the work achieved considerably impaired. A wise rule followed in the Philadelphia Convention was to allow members in Committees of the Whole House *a fortiori* in other Commitees to return to any matter that may have been disposed of when second thoughts or later developments require that to be done. First decisions ought to be considered as provisional. It ought to be possible to compare decisions with each other and harmonize them with each other. No body is infalliable in politics—not even constituent assemblies. And the adjuration of Oliver Cromwell to the House of Commons, "For Heaven's sake, gentlemen, you might bear in mind that you might be mistaken, sometimes" can be repeated to all deliberative assemblies.

A recital of the Standing Rules and Orders of the Philadelphia Convention might be in point at this stage and might be adopted by our Constitutional Assemblies with due modifications.

"A House to do business shall consist of the Deputies of not less than seven States; and all questions shall be decided by the greater number of these which shall be fully represented; but a less number than seven may adjourn from day to day.

Immediately after the President shall have taken the chair, and the members their seats, the minutes of the proceeding day shall be read by the Secretary.

Every member, rising to speak, shall address the President; and whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet or paper, printed or manuscript and of two members rising at the same time, the President shall name him who shall be first heard.

A member shall not speak oftener than twice, without special leave, upon the same question; and not the second

time, before every other, who had been silent, shall have been heard, if he choose to speak upon the subject.

A motion made and seconded, shall be repeated, and if written, as it shall be when any member shall so require, read aloud by the Secretary, before it shall be debated; and may be withdrawn at any time, before the vote upon it shall have been declared.

"Orders of the day shall be read next after the minutes, and either discussed or postponed, before any other business shall be introduced.

When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate shall be received.

A question which is complicated, shall at the request of any member, be divided, and put separately on the propositions of which it is compounded.

The determination of a question, although fully debated, shall be postponed, if the deputies of any State desire it until the next day.

A writing which contains any matter brought on to be considered, shall be read once throughout for information, then by paragraphs be debated, and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put on the whole, amended, or approved in its original form, as the case shall be.

Committees shall be appointed by ballot; and the members who have the greatest number of ballots, although not a majority of the votes present, shall be the Committee—when two or more members have an equal number of votes, the member standing first on the list in the order of taking down the ballots, shall be preferred.

A member may be called to order by any other member, as well as by the President; and may be allowed to explain his conduct or expressions supposed to be reprehensible. And all questions of order shall be decided by the President without appeal or debate.

Upon a question to adjourn for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

"When the House shall adjourn, every member shall stand in his place, until the President pass him.

That no member be absent from the House, so as to interrupt the representation of the State, without leave.

That Committees do not sit whilst the House shall be or ought to be, sitting.

That no copy be taken of any entry on the journal during the sitting of the House without leave of the House.

That members only be permitted to inspect the journal.

That nothing spoken in the House be printed, or otherwise published or communicated without leave.

That a motion to reconsider a matter which had been determined by a majority, may be made, with leave unanimously given, on the same day on which the vote passed; but otherwise not without one day's previous notice: in which last case, if the House agree to the reconsideration, some future day shall be assigned for that purpose".

Form and function have so much to do with each other—such is the teaching not only of the history of Art in general but of the political art in particular—that the shape and internal ordering of the hall in which the constitutional assembly is to hold its sessions, assumes importance. The large hall with its proportionately large public gallery in which the French National Assembly and the later Convention was held accounts for many of the constitutional devices that by promoting inefficiency and disorder brought into being the dictatorship of Napolean. A large hall with a large assembly must have good acoustics, as members that cannot hear what the presiding officer or the member speaking says cannot be expected to keep order. The Library Hall of the Central Legislature must be considerably changed before it can be used for deliberative work. Its acoustics must be eked out by such devices as a second ceiling, sound-absorbing doors, curtains, microphones, loud-speakers, etc.

An important question is whether there should be a special tribune to which speakers should come and from which they could address the assembly, or should be allowed to speak from their places in the assembly as is the practice in the British Parliament and in the Indian Legislatures. There are advantages in the practice to which members are used in Indian Legislatures. The tone and methods of rational and scientific argument and cool and calm debate so necessary in a constitutional assembly are secured—whereas from a tribune, the emotional oratory of the platform would be encouraged. And in Committee of the Whole House where members are allowed to speak more than once on a subject loss of time would ensue and the flow of debate would be interrupted if speakers had to walk up to the tribune every time. The timid but worth-hearing speaker would be discouraged from speaking if he had to walk to the tribune every time he wanted to speak. On the other hand the tribune secures certain advantages. A speaker from the tribune is better heard especially in large and numerous assemblies, only those that have something worth saying would take the trouble of going to the tribune, it would prevent unnecessary speakers and unnecessary speeches. But the other advantages claimed for the tribune that it leads to less disorder, that it promotes impartial speech and action, that it discourages irrelevent and unnecessary speaking has been disproved by the experience of Assemblies on the Continent of Europe. It is only in large and numerous assemblies such as public meetings that a tribune or platform is necessary. In parliamentary assemblies it is unnecessary and even harmful. On the whole the balance of advantage is in favour of the practice that obtains in Indian legislatures of members speaking from their places in the Assembly—unless the acoustics are so bad that a tribune is the only way of ensuring audibility. But if a tribune has already been determined on—and it is quite probable for the form and internal structure of parliamentary assemblies in India are determined by people who have had nothing to do

with or within them but by P. W. D. engineers and architects and Secretariat advisers—at least care should be taken that the tribune is placed by the side of the President and not in front and below him so that he could control and check the speakers' speech and action without having recourse to the hammer or bell, the frequent use of which causes irritation to the speaker without promoting order in the Assembly.

How should the members be seated in the Assembly? They may be seated anywhere they please or only in certain places allotted to them, their party or to their province. The first way would be confusing to the President and to the Assembly, the second would bring party affiliation and division to bear constantly and continuously on the debates—and this is especially to be avoided in India where parties are communal rather than political. The last method is the best, because provincial divisions would temper and cover up communal and religious differences and especially appropriate in a Constitutional Assembly that has to set up a federal constitution in which the claims of provinces to autonomy and self-government would have to be reconciled with the needs of a central government.

After discussion comes decision, after talking comes voting. How is it to be done in the Constitution-making Assembly? Should the voting be by individuals or by provinces and States? Since the constitution is for a country composed of different local units—the provinces and the States and the stability and prosperity of the new State will depend upon the will and energy of these local units, it is these local units, the provinces and the States, that must be called upon to vote on the Constitution. Such a voting would be not only more orderly and expeditious but it would be more expressive of the sense of the Assembly than if the voting were done by individuals. The latter method would be not only more expensive in time and temper, but it would be dominated by party and communal loyalties. The merits of the question would not have the ghost of a chance. But voting by provinces (11 in number) and States (about the

same number as individuals and groups) would override communal and party claims and the question discussed would have some chance of being decided on its merits. This voting by provinces and States may be organized in some such way as this. When a question, after adequate discussion is ripe for decision, the presiding officer of the Assembly would adjourn the Assembly for a couple of hours, the representatives of the several provinces and States or groups of States would repair themselves to one or other of the Committee and other rooms in the Assembly buildings, there come to their decision and when the Assembly meets again after the adjournment, the leader of the province or State would announce the vote of the Province or State. The only organizational difficulty that would present itself against this system is in the case of the Assembly of Section 'C' which is composed of only two provinces, Bengal and Assam. The constitution of this group must be an agreed constitution—agreed to by Bengal and Assam. If there is a deadlock as a result of inescapable disagreement, it may be resolved by reference for decision to the Constitutional Assembly as a whole.

After the constitution for the Union and the provinces and groups of provinces, if any, have been settled, they will have to be ratified by special conventions or legislatures, or in the case of the Indian States by the ratifying authority they have agreed to have. This is necessary as the constitution is to be made in India by Indians for India. A Government of India Act enacted in the British Parliament is neither necessary nor relevant. For once it is granted that the future constitution of India must be the work of authorities in India, there is no need for the intervention of the British Parliament. That intervention may be thought necessary for the transfer of sovereignty to Indian authorities. But that may be done by an Act of Parliament having that transfer of sovereignty only as its sole object. But when the sovereign power of enacting a constitution has already been conferred on Indian authorities and has been endowed with

Indian sanction—ratification by conventions or legislatures or other competent authorities—that sovereignty has been transferred by implication. If the transfer must be done explicitly it had better be done by Treaty between England and India rather than by a British Act of Parliament. And the treaty should be concluded as all treaties are between the Government of the two countries—between His Majesty's Government and the Government of the Union or United States of India, as I hope the new polity will be called as that would be a better title for the new federal polity in which the provinces and States will be sovereign on all but a few subjects of government allotted to the government at the centre. The Constitution-making Assembly cannot conclude this treaty as both the Cripps' and the Cabinet Delegation's proposals recommend. The Constitution-making Assembly is not a sovereign body and cannot conclude valid treaties.

THE SAFEST FOUNDATION
FOR
INDIAN NATIONALISM

It is, as a sign and result of more permanent causes of discord between Hindus and Muslims that these religious riots will create despondency amounting to despair in the heart of every Indian patriot. Religious discords between important sections of the people in the countries of Europe did not lead to any permanent or disastrous failure of patriotism. Although the Catholics and the Huguenots fought each other to the death and some of each party went to the length of appealing for help to the foreigner, yet the patriotism of the mass of the French people which produced Henri IV's victories at Arques and Ivry brought about the definitive unity of the French nation. It was this victory of French patriotism and unity that brought about the religious peace of the Edict of Nantes, Similarly in England, Catholics joined Protestants in rising against the Spanish Armada—to the disappointment of Philip II's agents, one of whom wrote to his master: 'Should a foreigner attempt to coerce them, Catholics and heretics would join together in offering resistence.' In Germany, in more recent times, Catholics have united with Protestants in all national wars.

In spite of deadly religious feud in these countries of Europe, patriotism has stood full square against the forces of political disruption. This is due to the fact that in these countries, patriotism and the sense of nationality had been well and securely founded before they were put to the strain of religious disunion. Thanks to a succession of strong monarchs and an increasingly centralized administrative system, and the growth of a common language and literature and of a common patriotism, these nations had been welded, some of them hammered, into political unity. This political unification was so strong that it could bear the stress and

strain of religious strife much more positive and active than even India has known.

Can a similar assurance be held out in regard to Indian nationality? Can we be sure that national unity in India will stand the strain of periodical religious outburst? Are the people so politically and socially united that they can refuse to be depressed by these occasional symptoms of religious discords? Are Hindus and Moslems—the problem works down to their mutual relationships, for they are the major communities—so united in the political and social spheres that it does not matter if they fight in regard to religious matters? The history of the relations between Hindus and Moslems ever since they became politically conscious gives us no comforting answers to these questions. Communal electorates, communal quotas in the administrative services, legislative safeguards have been claimed by the Moslems in communal distrust and granted by the governing authorities to secure communal peace. Communal laws still govern important parts of the legal lives of these communities, and no attempt is made to abolish them. It is usual for a certain class of political critics to accuse the British administration of promoting and keeping alive communal disunion. Apart from the fact that no wise ruler would add to the difficulties of the rule of an alien people by promoting communal hostility which might at any time break out into riot and which would serve to increase the cost of administration and therefore popular discontent, it is simply untrue that communal warfare is confined to British India and does not happen in Indian States.

Why, then, in spite of the growth of nationalism during the past half century, is communalism so strong in the country? To answer this question we may use the device made familiar and friutful by the modern study of history, the historical explanation. A review of the history of Indian nationalism may help us to explain the problem. The history of the origin and early days of the Indian national movement shows that Indian nationalism arose as a reaction

against certain operations and results of British rule. It arose as political criticism of the British administration. It was more a liberal than a nationalistic movement. The political association that preceded the Indian National Congress founded in 1885, like the British Indian Association of Bengal, the Indian Association of Bombay, the Sarvajanik Sabha of Poona, were liberal rather than nationalistic. The Indian National Congress itself, as can be seen in the recently published official history of it, aimed at political criticism rather than nationalist organization. If what is reported there is true, that the original idea of Mr. Hume, one of the founders of the Congress, of a national gathering of Indian public men once a year to discuss social matters and to cultivate friendly relations with one another, was deflected by the Viceroy Lord Dufferin's influence into that of a gathering where Indian politicians would meet yearly and point out to the Government in what respects the administration was defective and how it could be improved, we find here a description of the original feature of the Congress.

The Congress was true to this ideal till after the Great War of 1914—1918, when the active promotion of nationalism became an important plank of its platform. Not that there was no attempt to spread the national feeling in the early or middle years of the Congress. Among the objects of the Congress as defined by its first President, W. C. Bonerjee, in 1885, was 'the eradication by direct, friendly personal intercourse, of all possible religious, social or provincial prejudices amongst all lovers of our country, and the fuller development and consolidation of the sentiments of national unity'. But this was only one of four objects, all the rest of which aimed at criticism of the Government and its acts. The fact that among the resolutions passed by the Congress in the first twenty or thirty years of its life, few have anything to do with the promotion and consolidation of the national feeling, that the number of its delegates never went beyond the aristocratic number of a thousand, that no attempt was made to have the masses represented at its

meetings. bears out this contention. It would be unhistorical to say that the Congress did nothing to cultivate the national feeling during this, the first period of its history. The solemn and stately annual gathering of representative public men from all over the country discussing questions of great importance and concern to the people did create and nourish the national idea. But it was done indirectly, by the way, in the ultimate result, rather than directly and positively as in these latter days. Nationalism was only a by-product of the liberalism of the old Congress.

The political aims and characteristics of the Congress explain why it was at first a middle-class movement, They also explain why the Muslims together with other communities kept aloof from it. Dazed by the transfer of political power from their hands to alien hands, not yet alive to the possibility of regaining that power through English education, afraid of the community into whose hands the power they had once held was passing, they were suspicious of the new political organization and let the Congress go its way without help or hindrance from them. Although a few Muslims attended its annual meetings and two or three distinguished members of the community were elected Presidents, as a community they kept away from it. Realizing that education was their greatest need, they at first formed a Mohammedan Educational Association. It was only when they found political power being placed more and more on Indian shoulders that they were convinced of the need for political organization and in 1906 established the Muslim League.

They have chosen ever since to follow their own furrow. Except for the important exception of the Khilafat Agitation of 1919—21, when the Muslims joined hands with the Congress and left it to its own devices soon after their ends were achieved, the Muslims have followed the old policy. Although the Congress in these latter days has championed the cause of popular national interests like those of the ryots and the villages, the conditions of Labour, the promotion of Swadeshi, the Indianization of the civil and military services,

from the success of which championship Muslims would have profited proportionately with Hindus, it has left them cold. On the other hand, the opposition of Congress at one time and its present negative attitude to communal electorates, its adoption of the essentially Hindu idea and method of Satyagraha, the fear that Congress, with its acceptance of Western ideas of the sovereignty of numbers and of the method of constitutional change by means of popular Conventions, may lead to a Swaraj that is dominantly Hindu, still keeps them as a community hesitant from joining the fold of Congress, although it must be recognized that a much larger number of individual Muslims have joined it in recent years.

This attitude of the Muslims, then, was due to the political origins of Indian nationalism. It arose as a political theory. And as a political theory, like most political ideas that flourish in India, it was taken from the political armoury of the West. The modern European theory of nationality sprang into being as a protest of peoples living under the rule of aliens. The infamous partition of Poland towards the end of the eighteenth century started the history of this protest. Hungary, Bohemia, Greece, Belgium, Italy, Ireland continued it. The conquests of Napoleon had provoked the flaring up of nationality in Russia, Germany and Spain. It is in opposition to the Austrian government, says Lord Acton, that nationality in Europe grew into a system. As it was in Europe, so it has been in India. Indian nationalism was born out of protests against certain acts of omission or commission of British rule. Ever since, the main part of Indian nationalism has been hostlity to British rule. Curiously enough, the two phases in the history of European nationalism described by Lord Acton in his brilliant essay on Nationality (which when it was first published proved a stumbling-block to many of his students and admirers, but is now receiving support from the modern development of nationalism in Italy and Germany) are to be found in the history of Indian nationalism. At first in Europe the Turks,

the Dutch and the Russians were attacked not as susurpers but as oppressors—because they misgoverned, not because they were of a different race. Then began a time when the text simply was that nations would not be governed by foreigners. This text has in recent years been adopted by Indian nationalism under the leadership of the Congress. The apostle of this new nationalism of Europe, Giuseppe, Mazzini, has been one of the teachers of Young India.

The exotic origins of Indian nationalism explain at once its success and its failure. As a protest against British rule at a time when no provision had been made for parliamentary methods of criticism and influence, it gathered a certain measure of popularity. But it has been little more, even when, under the influence of Mr. Gandhi, it got hold of the masses. It has not achieved the positive, active unity of the people of India. It has not killed or neutralized the influence of communalism. It is a form of political criticism, it has not become the people's way of life. It has been used as a stick with which to heat British rule. It has not acted as a cement for the political union of the people.

This failure of Indian nationalism to achieve what it has achieved in Europe is to be explained only by its origins. It arose as a protest and continues to be a protest. It was born as a political theory and continues to be used in political criticism. And as political protest or theory or criticism, it will continue to be feeble and fruitless. If it is to do great things for the people, it must be more than a political theory or argument. It must spring from the depths of Indian life. It must be bound up with the life of the people. It must be born and grow as it did in Europe long before the days of the political theory of nationality.

National feeling in Europe was not the invention of the nineteenth century. It flourished in the countries of medieval Europe. Medieval nationalism was based on the love of the land. As the nations of Europe after the age of 'the wandering of the peoples' settled down within gradually fixed and defined territorial limits, their political union was

fed and nourished by the love of the land to which they belonged. *La belle France tant jolie, la patrie,* were the phrases to the music of which Frenchmen worked and played, fought and died, and in so doing made France, the France of history. It is the love of the land of France that has nerved Frenchmen to the great sacrifices required for national defence. While Englishmen complain of homesickness and the Greeks of nostalgia, the French speak, according to Chateaubriand, of *mal du pays.*

In England, Shakespeare sang of

> This royal throne of kings, this sceptred isle,
> This earth of majesty, this seat of Mars,
> This other Eden, demi-paradise,
> This fortress built by Nature for herself
> Against infection and the hand of war;
> This happy breed of men, this little world;
> This precious stone set in the silver sea,
> Which serves it in the office of a wall,
> Or as a moat defensive to a house,
> Against the envy of less happier lands;
> This blessed spot, this earth, this realm, this England.

In Scotland, Scott had written the lines:

> Breathes there the man with soul so dead
> Who never to himself hath said:
> This is my own, my native land?

Germany as a nation came to herself rather late in her history, but she has made up for lost time by a patriotism which is organized and self-conscious. German patriotism also is based on the love of the land: *Deutschland uber alles —uber alles in der Welt* and *Die Wacht am Rhein* are the hymns of German nationalism. It was love of country that kept the disembodied soul of Poland and made possible its resurrection after a century and a quarter of dismembered existence. Rousseau, framing a constitution for the Poles, inculcated a love of their country as the foundation of any durable constitution. To the cosmopolitan confusion of the

maxim: *Ubi bene, ibi patria,* he opposes the nationalist call: *Ubi patria, ibi bene.*

It is on the solid foundation of love of country, then, that the nationalism of European nations was raised. If Indian nationalism is to be something more than a counter-blast to British policy or a flag to wave on flag-waving occasions, or a magic formula the constant repetition of which will dope us into forgetting our communal squabbles, it must be founded on the love of India. If Indian nationalism is to be active, positive and fruitful, a habit, a way of life, part of the thoughts and feelings and acts of the people, it must be fed by the love of India. The love of the land of India, its mountains, its rivers, its valleys, its fruits, its plains, must become the dominant secular emotion of its people. 'Next to the love of parents for their children', says Edmund Burke, 'the strongest instinct both natural and moral that exists in man is the love of his country.' This instinct must be fed and nourished and made to grow into a passion so that 'the natal soil', in the words of Burke again, 'has a sweetness in it beyond the harmony of verse.'

India is a land worth loving. It is as well-defined, individual and unique as any woman. Its natural frontiers decisively separate it from its neighbours. Its lofty snow-clad Himalayan ranges with their sentinel peaks of Gauri-sanker, Kinchenjunga and Dunagiri, its rivers that spread out in their course like oceans, its forests wrapped in the silence of eternity, the rolling downs of its Dekkan plateau, its 'lily-dotted lakes', its long blue-belted sea-coast which wafts the breezes and the monsoons that bring the country health and prosperity, make India one of the most picturesque countries of the world. Its flora and its fauna give it other marks of distinction. The *ficus religiosa,* the *ficus indica,* the elephant and the tiger, have been to strangers the natural symbols of India. Few countries in the world have such a variety of natural scenery and climate ranging from those of the arctic to those of the tropical zone. Hills and the sea, mountains and rivers and lakes and forest and downland give India a

beauty of which one can never tire. Her people have no excuse not to love her when strangers have been known to be ravished by her beauty.

It is this love of the land of India that must capture the minds and hearts of all classes and sections of the people if Indian nationalism is to be secure. Hindu and Moslem and Christian and Sikh and Parsee and Untouchable can be united only in the common love of India. To Hindus it is their natural and historic home. Moslems, as the Aga Khan reminded us recently, 'had settled down in India for many centuries and had made India their home.' Christians living or dead are of the soil of India—the one life that is given them on earth is to be lived in India. Love of their country is the one treasure of which the Untouchables cannot be deprived. This land of India smiles on all her children alike. It has no communal preferences or dislikes. To all it returns the same reward—in the measure of their work for it. It is this love of the land of India that will bring the people together and unite them in bonds of unity that will not break. The more prominent this love of India, the more widespread it becomes, the deeper roots it strikes in the hearts of her people, the more assured will her unity be.

No other emotion or sentiment will do it. Religion cannot at present do it on account of fundamental diversity. Culture and civilization will not do it yet. Representative Moslems like Sir Muhammad Iqbal speak of the solidarity of Islam and look to other countries than India for cultural inspiration. Twenty years ago a Muslim deputation told the Sadler University Commission that 'no scheme of reconstruction could be useful or beneficial unless it recognizes the existence of conflicting ideals and conflicting interests in almost every sphere of life—social, political, religious—among the different sections of the population'. Politics will certainly not do it, for in the present state of incomplete political unity, every move towards self-government calls for weightage, safeguard, and even separation. To these demands of the Moslems, representatives of the Hindu Mahasabha

answer that Hindustan is on account of sheer numbers the land of the Hindus and that in the last resort India must be a Hindu State. Not through political leagues and compacts and formulas will Indian nationalism live. Not in the way of politics lies its salvation.

Politics, culture, religion being unable to support Indian nationalism, we must fall back on the land. Our politics, our culture, our social life, must be infused with love of and regard for the land. A policy of defence that will protect the chastity of the frontier lands of India will be a truly national policy. Political programmes that aim at the prosperity of the land and increase its fruitfulness will appeal to all communities, for they are all—Hindus and Moslems and Christians—passionately devoted to the land. They love the land even to the extent of promoting its fragmentation—an evil that prevails among Christian ryots as among their Hindu fellows in spite of the Law of Succession applicable to them.

Our literature and art must take up the land for the subject of their treatment. Not the laudation of this or that figure or incident of history or mythology—for history or mythology may divide and antagonize—but the praise of the land of India must fire the artistic ambition of the poets and painters of modern India. When we remember what poets like Gray and Thomson and Wordsworth and Burns have done to make their countries dear to their people, we have a right to look to our poets to do similar work for our country. Landscape-painting did much to spread the love of the land among the peoples of Europe. What Corot did in France and Gainsborough in England to make the scenery of their country a delightful memory, Indian painters are now expected to do for the Indian scene.

Our poets and painters would by so doing only follow an old historical tradition. The earliest Indian literature teems with references to the varied aspects of the land of India. A well-known criticism of the *Ramayana* and the *Mahabharata* is that nature, not man as in Greek epic poetry, dominates them. The *Atharva Veda* is instinct with feeling for the rivers

of India. It begins that litany of the rivers of India which is invoked continually in Indian literature down to the poetry of Rabindranath Tagore; the 'Oh, ye Ganga, Yamuna, Sarasvati, Pariumi, receive my prayer' of the Veda is expanded in Puranic times into: 'O ye Ganga, Yamuna, Sarasvati, Godaveri, Narmada, Sindu, Caveri, come ye and enter into the waters of my offering.' The *Prithvi Sukta* is considered by Prof. Radhakamal Mukherjee to be a string of 63 hymns to the mother country. One of them reads: 'Let thy hills and snowy mountains, let thy forest land be pleasant, . . . that soil on which stand the trees, the all-supporting soil that is held together, do we address.' The *Uttara Rama Charita* celebrates the great Dandaka forest and sings of 'the towering peaks diademed with clouds' near the source of the Godaveri:

> Where the springs of the Godaveri burst forth
> And at whose base the sacred conflux blends
>
> In one broad stream, the loud encountering torrents.

In the *Vikramorvasi*, the forest, the hills, rain, the ocean, are spoken of with loving tenderness. The old artistic tradition also was in favour of landscape-painting, as when in Kalidasa's *Sakuntala* to make a painting of the heroine perfect the king wants to add

> The stream of Malini and on its sands
> The swan-pairs resting; holy foot-hill lands
> Of great Himalaya's sacred ranges where
> The yaks are seen; and under trees that bear
> Bark hermit dresses on their branches high,
> A doe that on the buck's horn rubs her eye.

Not only art and literature but social life must become infused with this love of the land. The habit of travel must become an important part of the social life of the people. Our newspapers and magazines must devote pages and pictures to the description of the beautiful spots of India. The English practice of frequently publishing pictures of some notable bit of scenery must be adopted by the news-

papers, especially the vernacular newspapers of India. The work of the *Times of India Illustrated Weekly* in familiarising the people with the varied scenery of India deserves the greatest praise and gratitude. Indian magazines could not do better than follow that example.

If love of the land is to become a possession for ever it must capture the hearts of the young. At home and in the school, children must be brought up on the love of the land. Pictures of beautiful Indian scenery should adorn the walls of the living room of every Indian home. A map of India should hang in every class-room of a school. Periodical excursions to the great rivers and the blue hills and the beautiful lakes of India will bring a ray of gladness into the lives of the children and at the same time make them fall in love with their country. Not only children but adults, for we cannot wait till children grow up, must be educated into this love of the land of India. Through the eye and the ear, by means of literature and music, the cinema and the radio and the picture-poster as in Soviet Russia, this new education in patriotism must be organized.

Only in some such way of bringing up the people on the love of the land can Indian nationalism be cured of the malaise from which it has been suffering. Only the love of the land can unite the people. 'Back to the land' is therefore the advice to be given to Indian nationalism. Like Antaeus, it can renew its strength only by contact with the earth, the mother earth of India.

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